



Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-007389

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bashir v. Ballesteros*, 2022 BCCRT 458

B E T W E E N :

SHANNON BASHIR and SALEEM BASHIR

APPLICANTS

A N D :

GENEROSA BALLESTEROS also known as GINA BALLESTEROS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This small claims dispute is about a water leak in a condominium or strata building in June 2020.
2. The respondent, Generosa Ballesteros also known as Gina Ballesteros, owned condominium unit PH7 located directly above unit 307 co-owned by the applicants,

Shannon Bashir and Saleem Bashir. The strata corporation is not a party to this dispute. Ms. Ballesteros has since sold PH7.

3. The Bashirs claim that Ms. Ballesteros negligently failed to maintain her bathroom tile surround and this caused water to leak into their unit 307 in June 2020 and damage the unit's ceiling, walls and flooring. The unit 307 water damage was repaired under the strata corporation's insurance policy in November 2020.
4. The Bashirs say their daughter was living in unit 307 at the time of the water leak and moved out at the end of July 2020 because of the stress from anticipated repairs. They say Ms. Ballesteros delayed repairing PH7 and this meant the unit 307 repairs were delayed and they could not rent their unit until December 1, 2020. The Bashirs seek \$4,000 for lost rent and \$500 for moving and storage expenses.
5. Ms. Ballesteros denies that she was negligent in maintaining or repairing PH7 and says the bathroom leaks were fixed without delay. She says the Bashirs suffered no loss of rent or expenses from their daughter moving out. Alternatively, she says the Bashirs failed to mitigate their loss by not performing repairs sooner or making a claim under their own insurance policy.
6. The Bashirs are represented by Mrs. Bashir. Ms. Ballesteros is represented by a lawyer, Veronica Franco.
7. For the following reasons, I dismiss the Bashirs' claims.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

9. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
10. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

12. The issue in this dispute is to what extent, if any, the Bashirs are entitled to \$4,500 in damages from the water leak incident.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicants the Bashirs must prove their claims on a balance of probabilities, which means "more likely than not". I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
14. On about June 3, 2020, the Bashirs' unit 307 was damaged from a water leak in Ms. Ballesteros' PH7 bathroom situated directly above unit 307. The Bashirs' daughter was living in unit 307 at the time and PH7 was occupied by a long-term tenant. These facts are not disputed.

15. Following the leak, the strata corporation contacted its insurer who hired a plumber and a restoration company “On Side”. As set out in the plumber’s June 5, 2020 report, the plumber found water leaking from behind a “tub spout” and another leak from the toilet, both of which it immediately repaired. The plumber also identified that the shower tiles were in “bad shape” and were a potential source of additional water leakage. On Side similarly concluded that the poor condition of PH7’s tiled shower surround was a potential leak source and recommended it be replaced.
16. After Ms. Ballesteros was informed of the leak on June 8, 2020 she engaged a contractor, Hans Burch, to address the bathroom issues. According to Mr. Burch’s statement in evidence, he inspected the bathroom on June 9, 2020 for further sources of leaks and noted problems with cracked grout. He stated that he replaced the grout and re-sealed the tiles in “mid-June 2020”, and returned to complete the drywall, insulation and baseboards in August 2020. I accept Mr. Burch’s statement about the repairs as it is consistent with the records and communications at the time.
17. At the end of June, the strata manager emailed the Bashirs that their unit had to be temporarily vacated to allow the contractor to repair the floors and to paint the unit. The Bashirs’ daughter had continued to live in unit 307 after the water leak and until the end of July 2020. The Bashirs say she was preparing for a major school exam and it caused her stress not knowing exactly when the repairs would take place. As a result, they say their daughter decided to move out at the end of July and find somewhere else to live, which I address more below. I note there is no statement from their daughter in evidence.
18. The emails show Mr. Bashir asked to delay the unit 307 repairs until they were sure Ms. Ballesteros had replaced her tiled shower surround. The insurer agreed with Mr. Bashir’s suggestion to delay if there was risk of another leak from PH7’s shower surround. However, Ms. Ballesteros never replaced the shower surround and there is no evidence of any further leak. I infer the insurer was then satisfied that Mr. Burch’s grout and resealing work addressed the leak risk because the insurer paid for a contractor to complete the repairs in unit 307 in early November 2020. I find the delay

to repair unit 307 was likely due to miscommunication about what repairs Ms. Ballesteros had already done.

19. It is undisputed that the strata corporation's insurance covered the cost of all the repairs less a \$10,000 deductible, which it charged back to Ms. Ballesteros. Ms. Ballesteros paid the deductible as she says it was required of her under the strata corporation's bylaws.
20. As mentioned, the Bashirs allege Ms. Ballesteros did not perform regular maintenance of PH7 and she allowed PH7's bathroom to deteriorate to the point it flooded their unit and then she allegedly delayed its repair. The Bashirs say they were not able to rent unit 307 after their daughter moved out until December 1, 2020, which is the month after their repairs were completed. They say Ms. Ballesteros's inaction resulted in 4 months loss of rental income. In the Dispute Notice, the Bashirs claimed \$4,000 for lost rent and \$500 for their daughter's moving and storage expenses. In argument, they claim a total of \$4,500 for lost rent and say nothing about the expenses. Lost rent and moving and storage expenses were not part of the strata's insurance claim.
21. To prove liability in negligence, the Bashirs must show that Ms. Ballesteros owed them a duty of care, that Ms. Ballesteros breached the standard of care, that the Bashirs sustained a loss (damages), and that Ms. Ballesteros' breach caused the loss: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
22. As the upstairs neighbour, I find Ms. Ballesteros owed a duty of care to the Bashirs that she would reasonably maintain PH7 so it did not cause a risk of damage to the Bashirs' unit below. However, I find I do not need to decide if Ms. Ballesteros breached the standard of care because the Bashirs have not provided any evidence to prove they suffered a loss of income or moving or storage expenses.
23. First, the Bashirs provided no evidence that they received rental income for their unit 307 when their daughter was living in it. They do not say that their daughter was paying them rent and there is no rental agreement, income tax returns, bank

statements, e-transfer receipts, or any other evidence that shows the Bashirs received income from renting unit 307 to their daughter. So, I find their daughter was likely living rent free in unit 307 and the Bashirs suffered no loss of income because she moved out in July. They also submitted no receipts or other evidence showing they paid for their daughter to live elsewhere. Second, since the Bashirs submitted no receipts from a moving company or a storage company, I find the Bashirs likely did not incur any expense for their daughter's move.

24. I find Ms. Ballesteros is not responsible for any loss of potential rental income from the Bashirs not repairing their unit sooner. As mentioned, Ms. Ballesteros repaired PH7's shower surround without delay by mid-June. I find the contractor's delay to repair unit 307 was not from any fault on Ms. Ballesteros's part. In any event, the Bashirs do not say, nor have they provided evidence, that they expected to earn an income from unit 307 prior to the leak incident and so I find they likely had no such expectation. Instead, I find their opportunity to earn income from unit 307 only arose because their daughter decided to move out after the water leak. So, I find nothing turns on the delay as they had no prior expectation of earning income from unit 307 and so suffered no loss of opportunity.
25. In the circumstances, I find the Bashirs have not proven on a balance of probabilities they suffered a loss of income or moving or storage expenses from any action or inaction on the part of Ms. Ballesteros. For these reasons, I dismiss the Bashirs' claims.
26. Given my conclusions, I find no need to discuss the parties' evidence about the condition of Ms. Ballesteros' bathroom prior to the repairs or their mitigation arguments.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the Bashirs were the unsuccessful party, I find they are not entitled to any

reimbursement. Ms. Ballesteros did not pay any CRT fees or claim any dispute-related expenses.

ORDER

28. I dismiss the Bashirs' claims and this dispute.

Trisha Apland, Tribunal Member