



Civil Resolution Tribunal

Date Issued: May 2, 2022

File: SC-2021–001601

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Korsch v. Jaggard*, 2022 BCCRT 509

BETWEEN:

KAYLA KORSCH

APPLICANT

AND:

MITCHELL JAGGARD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about water damage in a strata building. This is 1 of 2 linked disputes about this issue. However, the linked dispute falls within the Civil Resolution Tribunal (CRT)'s strata jurisdiction and involves different parties. So, I have written a separate decision for the linked dispute (ST-2021-006181).

2. The applicant in this dispute, Kayla Korsch, lives in unit 212. The respondent in this dispute, Mitchell Jaggard, lives 3 floors above, in unit 512. Ms. Korsch says her strata lot was damaged by water escaping from Mr. Jaggard's bathroom tap on December 17, 2020. She claims \$2,000 as reimbursement of her paid insurance deductible.
3. Mr. Jaggard denies any wrongdoing. He says the leak occurred because the bathroom tap was faulty or improperly installed.
4. In the linked dispute, Mr. Jaggard says the strata knew the taps were faulty or improperly installed yet failed to warn owners, fix the problem, or pursue the developer or builder for a remedy. I will address those arguments in the separate decision.
5. Ms. Korsch represents herself. Mr. Jaggard is represented by a family member (BJ). The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the CRT. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says 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.
7. CRTA section 39 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 and fairness.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. 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

10. The issue in this dispute is whether Mr. Jaggard is liable for the water damage to Ms. Korsch's strata lot and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil dispute like this one the applicant Ms. Korsch must prove her claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.
12. Ms. Korsch says water leaked through her ceiling on December 17, 2020, which I accept based on her photos. She says the water came from Mr. Jaggard's apartment 3 floors up, which Mr. Jaggard does not dispute. Based on his December 17, 2020 Facebook post, I find Mr. Jaggard had discovered a flood coming from his upstairs bathroom tap early that morning.
13. The strata contacted Belfor Property Restoration (Belfor) for emergency restoration services. Based on Belfor's January 5, 2021 invoice, I find it addressed water damage in Ms. Korsch's unit (212), Mr. Jaggard's unit (512), and units 312 and 412. Based on Belfor's invoice I find it likely that water escaped Mr. Jaggard's unit 512 and travelled down three floors to damage Ms. Korsch's unit.

14. The applicable law governing responsibility for water damage between strata lot owners is that of private nuisance and negligence.
15. To prove negligence, Ms. Korsch must show Mr. Jaggard owed her a duty of care, that he failed to meet that duty, and that his failure resulted in the damages Ms. Korsch claims. The claimed damages must also be reasonably foreseeable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). I find Mr. Jaggard owed Ms. Korsch a duty of care as a neighbouring strata lot owner or occupant. I find the applicable standard of care is reasonableness (see the non-binding but persuasive decision *Burris v. Stone et al*, 2019 BCCRT 886).
16. Ms. Korsch says Mr. Jaggard is liable for the water damage, as his child left the bathroom tap on, which Mr. Jaggard denies. Ms. Korsch says even if the water escaped because the bathroom taps were faulty, or improperly installed, Mr. Jaggard is still liable as he failed to repair or replace the allegedly faulty taps. I infer Ms. Korsch argues that Mr. Jaggard was negligent in either failing to supervise his child or failing to address the faulty taps.
17. In his December 17, 2020 Facebook post Mr. Jaggard wrote that he came home early that morning to discover his tap “like so”. An included photo showed a small stream of water running from the bathroom tap and hitting the back edge of the sink and counter, rather than flowing directly into the sink. He wrote “the taps are a ticking time bomb as every single tap leaks onto the counter when not fully shut off”. Mr. Jaggard also emailed the strata on December 29, 2020 saying his child had left the tap on overnight.
18. In a January 5, 2021 email to the strata manager Mr. Jaggard wrote that he washed his child’s hands on December 16, 2020. He did not specifically say whether he turned the taps completely off, but he did write that even when the taps appeared to be off they could drip backwards along the tap onto the counter. In his submissions BJ argues that Mr. Jaggard mistakenly assumed his child left the tap on. He also argues the bathroom taps continue to drip water onto the counter, even when they appear to be off. I find this inconsistent with Mr. Jaggard’s earlier email and Facebook

posting that the taps leak onto the counter when not fully shut off. I prefer the earlier posting and emails as they were made closer in time to the actual event. I also find they are consistent with the video evidence Mr. Jaggard submitted, explained below.

19. The video shows someone turning off the bathroom faucet. As the flow of water lessens, the water is directed toward the back of the sink wall, eventually striking the back edge of the sink and the counter. So, I find the water runs onto the sink and counter when the tap is not fully turned off. Although the video is not dated, Mr. Jaggard says this was a recreation of the events leading to the flood, so I infer the video was created sometime after December 17, 2020. Based on other videos of the taps running directly into the sink as expected, I find the taps do not always direct water to the counter.
20. There is no video evidence or photos of the tap appearing to be off, then starting to drip or run onto the counter. On balance, I find it likely that either Mr. Jaggard or his child left the upstairs bathroom tap partially on and the water ran onto the bathroom counter, then off the counter, onto the floor, and through the other strata lots.
21. Mr. Jaggard argues the taps are faulty or improperly installed, which is why the water runs onto the counter instead of into the sink. He submitted 3 statements from tradespeople who all say the taps are incorrect. I find the statements do not qualify as expert opinions under the CRT rules because they do not contain the parties' qualifications to provide expert evidence. Further, the statements appear to be BJ's notes on what the tradespeople said, rather than the tradespeople's own words. So, I give the statements no weight.
22. In any event, even if the taps are faulty or improperly installed, I would still find Mr. Jaggard responsible for the flood. This is because I find Mr. Jaggard was aware that the bathroom taps sometimes ran onto the counters prior to the December 17, 2020 flood yet failed to take any steps to remedy it.
23. I base this finding on Mr. Jaggard's July 11, 2020 Facebook post submitted by the strata. Mr. Jaggard posted to the strata building group that the cabinet drawers in both his bathrooms were warped "because of the terrible faucets installed in our

building. You might think they are off but the water runs down the faucet onto the counter top which is extremely dangerous.”

24. Mr. Jaggard says the July posting is about the downstairs bathroom and he did not know the upstairs bathroom taps had the same issues. I find this inconsistent with the reference to both bathrooms in the post. On balance, I find Mr. Jaggard was aware that the upstairs bathroom tap ran or leaked onto the counter. I further find Mr. Jaggard was aware the water could cause damage, given his damaged cabinet drawers.
25. I find a reasonable person in these circumstances would fix or replace bathroom taps that they knew ran water onto the countertop rather than into the sink. I find Mr. Jaggard did not take these steps here, given he says his bathroom taps and sink were installed by the builder. So, I find Mr. Jaggard is liable in negligence for failing to remedy bathroom taps that he knew could, and had, directed water onto his counters and caused prior water damage in both bathrooms. In other words, I do not accept Mr. Jaggard’s argument that water damage occurred through no fault of his own.
26. As I find Mr. Jaggard was negligent, I find I need not determine whether he is also liable in private nuisance.
27. Based on Belfor’s January 14, 2021 invoice to Ms. Korsch’s insurer, I find Ms. Korsch paid a \$2,000 deductible, and her insurance company paid the remaining \$1,258.86 for Belfor to repair the water damage. Mr. Jaggard says it only cost him \$1,000 to fix the water damage in his own apartment. I infer he argues Ms. Korsch’s repair costs are higher than they should have been or that the repairs could have been carried out at a cost below her insurance deductible. However, Mr. Jaggard provided no evidence to contradict Belfor’s detailed invoice and estimate for unit 212. In the absence of such evidence, I find Belfor’s detailed scope of work for unit 212 is reasonable, based on Ms. Korsch’s photos of the water damage.

28. So, I find Mr. Jaggard must reimburse Ms. Korsch \$2,000 for her paid insurance deductible.
29. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. In this case, I find Ms. Korsch was successful in her claim so Mr. Jaggard must reimburse Ms. Korsch the \$150 she paid in CRT fees. She claimed no dispute-related expenses.
30. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Korsch is entitled to prejudgment interest on her \$2,000 award from Belfor's January 14, 2021 invoice date showing the paid deductible to the date of this decision. This equals \$11.61. Mr. Jaggard is entitled to prejudgment interest on his \$874.30 award from the May 25, 2021 payment date to the date of this decision. This equals \$3.66.
31. The strata must comply with section 189.4 of the SPA, which includes not charging the expenses of this dispute against Mr. Jaggard.

ORDERS

32. I order that within 21 days of this decision Mr. Jaggard must pay Ms. Korsch a total of \$2,162.61, broken down as follows:
 - a. \$2,000 in damages,
 - b. \$11.61 in prejudgment interest under the COIA, and
 - c. \$150 in CRT fees.
33. Ms. Korsch is also entitled to post judgment interest under the COIA.
34. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member