



# Civil Resolution Tribunal

Date Issued: May 9, 2022

File: SC-2021-009355

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chuang v. Wong*, 2022 BCCRT 552

BETWEEN:

JACKY CHUANG

**APPLICANT**

AND:

THOMAS WONG and SELMAY CHOY WONG

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about water damage. The applicant, Jacky Chuang, says water leaked from a condominium unit owned by the respondents, Thomas Wong and Selmay Choy Wong, causing damage to Mr. Chuang's unit. Mr. Chuang seeks \$2,362.50 for the damage to his unit.

2. The Wongs say their unit was tenanted at the time, and that they are not responsible for the tenant's actions. The tenant is not a party to this dispute.
3. Mr. Chuang represents himself. The Wongs are represented by their insurer.

## **JURISDICTION AND PROCEDURE**

4. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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.
7. 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**

8. The issue in this dispute is whether the Wongs are responsible for the water leak, such that they must pay Mr. Chuang \$2,362.50 for water damage repairs.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Mr. Chuang must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. The background facts are not disputed. Mr. Chuang owns unit 202, while the Wongs own unit 203, which is directly beside unit 202. On December 31, 2020, the tenants of unit 203 started a bath and inadvertently let the water overrun, causing damage to Mr. Chuang’s unit. Mr. Chuang says that the Wongs are liable to reimburse him the \$2,362.50 for repairs as the owners of the unit where the leak started.
11. The Wongs do not dispute the occupiers of unit 203 was negligent, but say they are not responsible to pay for that negligence. The Wongs suggest that the occupiers may have been a sub-lease from their tenant, contrary to the Wongs’ residential tenancy agreement. However, I find nothing turns on that. There is no suggestion and no evidence that the Wongs themselves did something or failed to do something that led to the bathtub overflowing.
12. The parties submitted the strata corporation’s bylaws as evidence. I note there is no bylaw that holds one owner strictly liable for water escaping from their strata lot. Therefore, in order to succeed in his claim, Mr. Chuang must prove the Wongs are legally liable for the damage, either under the law of negligence or the law of private nuisance.
13. To establish a claim in negligence, Mr. Chuang must show that (1) the Wongs owed him a duty of care, (2) the Wongs breached the applicable standard of care, and (3) that the breach caused foreseeable loss or damage. The burden to prove negligence

is on Mr. Chuang, on a balance of probabilities (see: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

14. There is no dispute the Wongs owed a duty of care to Mr. Chuang as owners of a neighbouring strata lot. It is also undisputed overfilling the bathtub caused the leak and subsequent damage in Mr. Chuang's unit. I find the applicable standard is to take reasonable steps to avoid causing water damage to neighbouring apartments. Here, I find this means not permitting water to overflow the bathtub. I find no evidence that the Wongs breached the applicable standard of care.
15. I say this because there is no evidence the Wongs were aware the tenants would overfill the bathtub. There is no indication it had been done before and the Wongs knew it was an issue. I find at the time of the leak, the tenant had exclusive control of the Wongs' unit, and the Wongs could not have known about or prevented the leak. So, I find it unproven the Wongs breached the standard of there. Therefore, I find they were not negligent.
16. As for private nuisance, a nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. However, if the person is not aware of the problem that causes the interference, and has no reason to know about it, they will not be liable because they did not act unreasonably (see: *Theberge v. Zittlau*, 2000 BCPC 225 at paragraph 51).
17. As noted above, I find the Wongs were not aware the tenants would or did overfill the bathtub. So, I find the Wongs are not liable in nuisance.
18. To the extent Mr. Chuang argues the Wongs are responsible for the tenant's actions in overflowing the bathtub, I disagree. In *Shahgaidi v. Zhang*, 2018 BCSC 282, the BCSC overturned a prior BCPC decision, and held that a landlord should not be responsible for their tenant's acts unless the landlord directly authorized them, or there was a high degree of probability that the nuisance would result from the purposes for which the property was rented (paragraph 32). *Shahgaidi* involved water escaping from one strata lot to another, and the BCSC concluded the mere fact water

use and the use of a kitchen and bathroom was included in the tenant's rent was an insufficient connection. In particular, the court held that the egress of water was not a necessary consequence of providing water for residential use. So, the landlord in *Shahgaidi* was not liable in nuisance because they did not specifically contemplate the nuisance, nor did they become aware that the nuisance was ongoing.

19. Given the case law and my findings that the Wongs were not aware of the tenant's actions or should have known about them, I find the Wongs cannot be held liable in either negligence or nuisance. I dismiss Mr. Chuang's claims. Nothing in this decision prevents Mr. Chuang from pursuing a claim against the Wongs' tenant or whoever the occupiers of unit 203 were at the time, subject to the applicable limitation period.
20. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Chuang was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees or claimed dispute-related expenses. The Wongs did not pay any tribunal fees or claim for any dispute-related expenses.

## **ORDER**

21. I order Mr. Chuang's claims, and this dispute, dismissed.

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Andrea Ritchie, Vice Chair