



Civil Resolution Tribunal

Date Issued: September 22, 2022

File: SC-2022-000001

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Acer v. Anderson*, 2022 BCCRT 1048

BETWEEN:

SAGE ACER

APPLICANT

AND:

RUSSELL GORDON ANDERSON and SUSAN JANE ANDERSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about water damage in a strata building.
2. The applicant, Sage Acer, lives in unit 209. The respondents, Russell Gordon Anderson and Susan Jane Anderson, own unit 309, which they rented to a tenant. Ms. Acer says that her strata lot was damaged by water that escaped from a

dishwasher in the Andersons' strata lot. Ms. Acer says the repairs were estimated to cost over \$5,000. She initially opened an insurance claim, which would have required her to pay a \$1,000 deductible. However, she says that the Andersons were responsible for delays that prevented her insurer from proceeding with timely repairs, and so she says she cancelled her insurance claim before paying the deductible and did the repairs on her own. Ms. Acer claims \$1,000 for the value of her insurance deductible.

3. The Andersons deny that they caused any delays. They say that because Ms. Acer did not proceed with an insurance claim or pay the applicable deductible, they are not responsible for paying the claimed \$1,000.
4. Ms. Acer is self-represented. Mr. Anderson represents himself and Ms. Anderson.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issue in this dispute is whether the Andersons are liable for the water damage to Ms. Acer's strata lot, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Acer must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. Ms. Acer discovered water leaking through her ceiling on July 17, 2021. She says the water originated from a dishwasher in the Andersons' strata lot, which is not disputed. The strata hired a restoration company, PR, to perform emergency repairs. Ms. Acer did not provide detailed evidence about what the emergency repairs entailed within her strata lot, or any photos. She says that half of her kitchen was demolished, and that walls were opened up, which I accept, as it is undisputed and consistent with PR's May 27, 2022 repair estimate in evidence.
12. Ms. Acer initially opened a claim with her insurance company to complete the repairs to her strata lot, with an applicable \$1,000 deductible. However, Ms. Acer later cancelled the claim without paying the deductible, and proceeded with repairs on her own. None of this is disputed.
13. Ms. Acer says she cancelled her insurance claim because her insurer was unable to start repairs due to delays by the Andersons. However, I find nothing turns on the

alleged delays because, for the following reasons, I find Ms. Acer has not established the Andersons are responsible for the water leak and resulting damage to Ms. Acer's strata lot.

14. Ms. Acer did not set out the legal basis for her damages claim against the Andersons in the Dispute Notice. In submissions, she argued that under "strata rules", owners are responsible for damage caused to other units when the damage originates from their strata lot.
15. Ms. Acer did not submit a copy of the strata's bylaws or rules in evidence. She provided only a September 22, 2021 letter she received from the strata, which enclosed a May 8, 2017 legal opinion prepared for the strata about responsibility to repair water damage to strata lots. The legal opinion assumes that the standard bylaws under the *Strata Property Act* (SPA) apply, and concludes that owners, not the strata, are responsible for repairing damage within their strata lots.
16. The opinion does not consider responsibility between 2 owners. I have reviewed the standard bylaws and find that nowhere do they say an owner is liable to another owner for damage to their strata lot. While section 158(2) of the SPA says a strata corporation can sue an owner to recover its insurance deductible if the owner is responsible for the damage, it does not make an owner responsible for another owner's deductible. So, I find Ms. Acer has not proven that the Andersons are responsible for her repair costs under the strata bylaws or the SPA.
17. I find that Ms. Acer is essentially arguing that the Andersons are responsible simply because water escaped from their strata lot. However, the law does not impose such strict liability for water damage in these circumstances. Generally, the applicable law governing responsibility for water damage between neighbours is either the law of negligence or the law of private nuisance: see for example *Zale et al v. Hodgins*, 2019 BCCRT 466.
18. A nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. However, if the person did not actively create the

nuisance, they will not be liable unless they knew or ought to have known about the nuisance and failed to take reasonable steps to remedy it: see *Theberge v. Zittlau*, 2000 BCPC 225.

19. As noted, the Andersons did not live in unit 309 when the water leak occurred. The Andersons' tenant is not a party to this dispute. There is no evidence before me, and Ms. Acer did not argue, that the Andersons were aware or could have been aware of the leak. So, I find the Andersons are not liable in nuisance.
20. To find the Andersons liable in negligence, Ms. Acer must prove that the Andersons owed her a duty of care, that they breached the standard of care, and that she sustained foreseeable damage caused by their breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
21. I find that as owners of a neighbouring strata lot, the Andersons owed Ms. Acer a duty of care. I find the applicable standard of care is reasonableness: see the non-binding but persuasive decision *Burris v. Stone et al*, 2019 BCCRT 886.
22. There is no evidence before me about the water leak's cause. Ms. Acer says only that the Andersons' tenant "turned on an old dishwasher". There is no other evidence about the dishwasher's age or condition, or where on the dishwasher the leak originated. There is also no evidence about how long the Andersons' tenant had been living in unit 309. Overall, I find there is insufficient evidence before me to conclude the Andersons failed to reasonably maintain or repair the dishwasher, or that they should have reasonably anticipated a leak would occur. So, I find Ms. Acer has not shown the Andersons were negligent.
23. For all the above reasons, I find Ms. Acer has not established any legal basis that the Andersons are liable for the costs to repair her strata lot. Given this conclusion, I find it is unnecessary to consider Ms. Acer's claimed damages. I dismiss Ms. Acer's claims.
24. 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. Ms. Acer was unsuccessful and so I dismiss her claim for CRT fees and dispute-related expenses. The Andersons did not pay any fees or claim any expenses, so I make no order.

ORDER

25. I dismiss Ms. Acer's claims, and this dispute.

Kristin Gardner, Tribunal Member