Civil Resolution Tribunal

Date Issued: October 18, 2022

File: SC-2022-000648

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sangara v. Shi*, 2022 BCCRT 1137

B E T W E E N :

PERMINDER JIMMY SANGARA

APPLICANT

A N D :

YALUN SHI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Leah Volkers

INTRODUCTION

1. This small claims dispute is about water damage in a strata corporation (strata). The applicant, Perminder Jimmy Sangara, owns a strata lot below a strata lot owned by the respondent, Yalun Shi. It is undisputed that there was a leak from a shower fixture in the respondent's strata lot that damaged the applicant's strata lot. The applicant says the respondent is responsible to repair and maintain the shower fixture, and is

responsible for the applicant's repair costs under the strata's bylaws. The applicant claims $1,820.47 for the cost of repairs. The strata is not a party to this dispute.

2. The respondent does not dispute that the leak occurred, but denies any responsibility for the applicant's repair costs.

3. The applicant is self-represented. The respondent is represented by JW, who is not a lawyer.

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 the dispute's parties that will likely continue after the CRT process has ended.

5. 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.

6. 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.

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 respondent is responsible for the applicant's claimed water damage repair costs.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

10. The evidence shows a shower in the respondent's strata lot leaked on May 5, 2020 and caused water damage to several strata lots in the strata, including the applicant's strata lot. The respondent does not dispute this.

11. However, the respondent says they are not responsible for applicant's water damage repair costs just because the leak started in their strata lot.

12. The applicant says the respondent is responsible to reimburse him for the leak repair costs under the strata's bylaw 35(6) and bylaw 42(1).

13. Bylaw 35(6) says that owners, tenants, and occupants are responsible for any damage caused by a waterbed, appliance or other fixtures within their strata lot.

14. In another CRT dispute, a CRT vice chair found that an identically worded bylaw did not make owners responsible to pay for damages incurred by neighbouring owners as a result of a leak. The vice chair reasoned that the bylaw did not explicitly include this responsibility for damages between owners, and found that it would be speculative to infer that meaning. The vice chair said that the strata's bylaws apply between the owners and the strata, and found that they do not create an entitlement to damages or reimbursement between owners unless explicitly stated. See *Dalal v. Won*, 2020 BCCRT 1268 at paragraphs 26 and 27. Although other CRT decisions are not binding on me, I find the vice chair's reasoning in *Dalal* persuasive and I apply it

in this dispute. Therefore, I find bylaw 35(6) does not make the respondent responsible to pay for the applicant's water damage repair costs.

15. Bylaw 42(1) sets out when the strata can charge back common property repair costs to strata lot owners. However, I find bylaw 42(1) does not apply when a strata lot owner seeks to recover their own strata lot repair costs from another strata lot owner. So, I find bylaw 42(1) does not apply in this dispute. There are no other bylaws that address liability between strata lot owners for water leaks.

16. The applicant says the respondent is responsible to maintain their handheld shower in good working order. Although the applicant does not use these words, I find the applicant also relies on both the law of negligence and nuisance.

17. To succeed in negligence, the applicant must prove:

    a. The respondent owed him a duty of care,

    b. The respondent breached the standard of a reasonable condo resident, causing damage, and

    c. The damage was a reasonably foreseeable consequence of the negligent act or omission.

18. I find that the respondent owed the applicant a duty of care as a neighbouring strata lot owner. It is undisputed that the applicant suffered water damage, which I find is a reasonably foreseeable consequence of a water leak. The question is whether the respondent's conduct fell below the standard of a reasonable strata lot owner.

19. A nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. Where a person does not intentionally create a nuisance, they will only be liable if they either knew or reasonably should have known about the potential nuisance and failed to do anything to prevent it. In other words, the respondent is not automatically liable for the leak repair costs just because the leak originated in their strata lot. See *Theberge v. Zittlau*, 2000 BCPC 225, at paragraphs 33 to 36.

20. With that, I find that the applicant must prove the same thing to succeed in negligence and nuisance: that the respondent failed to take reasonable steps to avoid causing water damage to neighbouring strata lots.

21. As noted, the applicant says the respondent is responsible to maintain their handheld shower in good working order. The applicant says the improper seal in the respondent's shower caused the leak and resulting damage. The respondent says the leak was caused by a failure in the shower head's supply feed line and was not foreseeable.

22. It is undisputed that the leak was caused by the respondent's handheld shower head. A leak investigation invoice from Pacific West Mechanical Ltd. in evidence indicates that the leak was caused by a missing flat rubber washer in the handheld shower connection.

23. The applicant did not argue that the respondent was aware, or could have been aware of the missing flat rubber washer in the handheld shower connection. There is also no evidence to suggest that the respondent failed to reasonably maintain the handheld shower connection, or that they should have identified the missing washer or otherwise reasonably anticipated a leak would occur. I find no evidence that the respondent failed to reasonably prevent the leak. So, I find the respondent is not liable in negligence or nuisance.

24. For all the above reasons, I find the applicant has not proved that the respondent is responsible for the applicant's strata lot repairs. So, I find it unnecessary to consider the applicant's claimed damages and I dismiss his claims.

25. 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. As the applicant was unsuccessful, I dismiss his fee claim. Neither party claimed dispute-related expenses, so I award none.

ORDER

26. I dismiss the applicant's claim and this dispute.

Leah Volkers, Tribunal Member