



Civil Resolution Tribunal

Date Issued: November 21, 2022

File: SC-2022-002821

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zeng v. Boychuck*, 2022 BCCRT 1252

BETWEEN:

VERONICA ZENG

APPLICANT

AND:

CATHERINE KAREN BOYCHUCK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This small claims dispute is about water damage in a strata building.

2. The applicant, Veronica Zeng, lives in unit 1902. The respondent, Catherine Karen Boychuck, lives in unit 2002, above unit 1902. The strata corporation is not a party to this dispute.
3. Ms. Zeng says in the past 2 years, there were multiple water leaks from unit 2002 into unit 1902, causing damage. She seeks an order that Ms. Boychuck “fix the leak she caused in my unit”. She claims \$1,000 as a remedy, but says her actual damages are much higher.
4. Ms. Boychuck acknowledges there were 2 leaks from unit 2002 in the last 2 years, but she says she was not negligent and is not responsible for damage in 1902.
5. Each party is self-represented. As I explain below, I dismiss Ms. Zeng’s claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

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.
10. As noted, Ms. Zeng's requested remedy was for Ms. Boychuck to "fix the leak she caused in my unit, and stop creating stress to my unit from now on." In submissions, she says she wants Ms. Boychuck to "fix her part asap, money is secondary." However, she also says that the most recent leak stopped around May 9, 2022, a week after she filed her CRT dispute application, and the evidence shows she repaired her bathroom ceiling. So, I find there is no active leak to be stopped. In any event, an order that a person do or stop doing something is called an injunctive order. I find that CRTA section 118 does not permit me to make such an order in this small claims dispute, so I do not order Ms. Zeng to fix the leak.
11. Ms. Zeng says the \$1,000 claim was an estimate because she did not know how much it would cost to repair the damage, but says her damages are much higher. She did not seek to amend her Dispute Notice to claim more than \$1,000, so it would be procedurally unfair to award damages over \$1,000. However, given that I dismiss Ms. Zeng's claim, nothing turns on this.

ISSUES

12. The issue in this dispute is whether Ms. Boychuck unreasonably failed to prevent any of the leaks.

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. Zeng must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

14. Neither party provided evidence of strata lot ownership, but neither party disputes that the other is an owner. It is also undisputed that Ms. Boychuck did not live in unit 2002 during any of the alleged leaks, and rented it to 1 or more tenants. It is unclear whether Ms. Zeng lived in unit 1902.
15. Ms. Zeng says in June 2019 there was a leak into one of unit 1902's bathrooms, resulting in bubbling on the ceiling. She says Ms. Boychuck acknowledged the leak and addressed it by replacing a toilet seal, so Ms. Zeng did not feel the need to follow up with Ms. Boychuck about repairs. Ms. Boychuck denies that any leak originated in unit 2002 in 2019, but says she replaced her toilet seal in her guest bathroom that year when the strata manager suggested it. Ms. Zeng does not claim damages related to this alleged 2019 leak, and I find she would be out of time to do so under the *Limitation Act*. I infer that Ms. Zeng raises the 2019 leak to show a possible pattern of leaks or awareness of the potential for leaks from faulty toilet seals. I address that argument below.

Washing machine leak

16. A leak occurred on June 27, 2020. Ms. Boychuck says her tenant was using the washing machine when it began to leak water. She says the tenant immediately turned off the machine, shut off the water valve and called the building manager. She says some water leaked onto the floor of unit 2002 but the tenant quickly mopped it up.
17. Ms. Zeng says in "July 2020" water poured from a guest bathroom vent in unit 1902 at 3 a.m.. I infer that she means the June 27 leak. Ms. Zeng says the damage was significant, with water getting into concrete walls and down through her unit and into unit 1802. Ms. Zeng says the leak resulted in moisture throughout her guest bathroom and living room ceiling and walls, down to her floor, causing the flooring to buckle and crack. Ms. Boychuck does not dispute the extent of the damage, which is consistent with photos and the invoice from Platinum Pro-Claim, which provided emergency services on the strata corporation's behalf.

18. The strata corporation paid for the emergency response, including having a plumber attend unit 2002 and another contractor install a dehumidifier in unit 1902. The plumber's report, from Trotter & Morton, said the "drain could have been clogged or machine leaking, wasn't able to determine without running a load," which they did not do because it was "after hours." Trotter & Morton suggested Ms. Boychuck repair the washing machine and clean the drain before running it again. Ms. Boychuck purchased and installed a replacement washing machine on August 30, 2020. Ms. Boychuk made her own insurance claim for damage in unit 2002. There is no evidence that the strata corporation made an insurance claim. The washing machine has not leaked since.

Toilet leak

19. In April 2022, Ms. Zeng discovered bubbles in the ceiling paint near a vent in her ensuite bathroom. She contacted the strata manager. Ms. Boychuk confirms that on April 25, 2022 she received a call from the strata manager who wanted unit 2002 checked for leaks. Ms. Boychuck immediately called her tenant to check for leaks but they did not find any. A few hours later, the tenant allowed Ms. Zeng's friend and a building security guard to inspect unit 2002. According to a report from building security, the floors were dry and there was no indication of a leak. This is also confirmed in a written statement from Ms. Boychuck's tenant. Ms. Boychuck says she also inspected unit 2002 herself and found no leaks.

20. Ms. Zeng says in order to prevent further damage, she hired a plumber to cut open her ensuite bathroom ceiling. She says the leak continued for "weeks." Her invoice from MidCity Plumbers says on April 29, 2022, the plumber noticed a 3-inch toilet "MJ 90 Cremco (clamp) with drip." I infer that these are parts of the drain under unit 2002's ensuite bathroom toilet that connected it to a larger wastewater pipe. The plumber tightened the clamp but I infer the tightening did not stop the leak. The plumber returned on May 3 to cut out the "old faulty Cremco and MJ 90," which they replaced with "proper MJ band and new MJ 90." Ms. Zeng paid \$448.35 for these repairs, but says despite the repairs, the leak continued.

21. Ms. Zeng says the leak finally stopped on May 9, the day the strata manager advised that Ms. Boychuck had replaced her toilet's wax seal. Ms. Boychuck confirms that at the strata manager's suggestion, she had a plumber change the toilet's wax seal "to be preventive." That plumber, according to Ms. Boychuck, could not find any leak, but changed the toilet's wax seal. The invoice says this work happened on May 5, 2023, which I find is a typo and should say May 5, 2022. Ms. Zeng then hired another contractor to repair the ceiling, at a cost of \$472.50.

Analysis

22. I turn to the applicable law. I note that the strata corporation's bylaws are not in evidence. There are emails and letters from the strata manager in evidence that give conflicting information about whether the bylaws impose liability on owners for damage to other strata lots. Without a copy of the bylaws in evidence, I cannot conclude that they impose liability on owners for damage to other strata lots. In any event, Ms. Zeng does not explicitly rely on any bylaw.

23. Although Ms. Zeng does not use these words, I find she relies on the law of negligence and nuisance.

24. To succeed in negligence, Ms. Zeng must prove:

- a. Ms. Boychuck owed her a duty of care,
- b. Ms. Boychuck breached the standard of a reasonable strata lot owner, causing damage, and
- c. The damage was a reasonably foreseeable consequence of the negligent act or omission.

25. I find that Ms. Boychuck owed Ms. Zeng a duty of care as a neighbouring strata lot owner. It is undisputed that both leaks damaged unit 1902, which I find was a reasonably foreseeable consequence of a water leak. The question is whether Ms. Boychuck's conduct fell below the standard of a reasonable owner.

26. 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, Ms. Boychuck is not automatically responsible for damage in unit 1902 just because the leak originated in unit 2002 (see *Theberge v. Zittlau*, 2000 BCPC 225, at paragraphs 33 to 36).
27. This means that Ms. Zeng must prove the same thing to succeed in negligence or nuisance. She must show that Ms. Boychuck unreasonably failed to prevent the leak or to prevent further damage once the leak was discovered.
28. The evidence indicates that the washing machine leak was spontaneous. That is, there is no evidence the washing machine had previously experienced problems or showed signs of imminent failure. When Ms. Boychuck became aware that the washing machine had leaked, she replaced the washing machine before the tenant used it again, and there have been no more leaks since then. Ms. Boychuck did what a reasonable strata lot owner would do in the circumstances. So, I find Ms. Zeng has not proved that Ms. Boychuck acted unreasonably with respect to the washing machine leak.
29. As for the toilet leak, I am unable to determine the leak's cause on a balance of probabilities. Given that the leak stopped after the wax seal was replaced, a failed wax seal is a possible cause. However, neither Ms. Zeng's plumber nor Ms. Boychuck's plumber identified a failed seal as a likely or even possible cause. Even if I accepted that the leak's cause was a failed seal, I would not find Ms. Boychuck responsible for the resulting damage. As with the failed washing machine, there is no evidence that Ms. Boychuck should have been aware of a faulty seal, or any other issues with the toilet. As noted, Ms. Boychuck and several others inspected unit 2002 for the source of the leak and could not see any signs of leaking.
30. When the strata manager suggested Ms. Boychuck hire a plumber to replace the seal, she did so. I find that by doing so, Ms. Boychuck acted reasonably. I find the

fact that Ms. Boychuck replaced a toilet seal in her guest bathroom in 2019 does not mean that she should have replaced her ensuite bathroom toilet seal any sooner. There is no evidence about how long toilet seals are expected to last. While I acknowledge that the leak persisted for 10-14 days after discovery, I find it unlikely that replacing the seal sooner after the leak's discovery would have significantly reduced the damage, given the leak was a slow drip. In all, I find Ms. Zeng has not proved that Ms. Boychuck acted unreasonably, either before or after the April 2022 leak.

31. In summary, I find Ms. Zeng has not proved that Ms. Boychuck acted unreasonably with respect to either leak, so I dismiss Ms. Zeng's claim.
32. 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. Boychuck was successful but did not pay CRT fees or claim expenses. I dismiss Ms. Zeng's claim for reimbursement of CRT fees.

ORDER

33. I dismiss Ms. Zeng's claims and this dispute.

Micah Carmody, Tribunal Member