



Civil Resolution Tribunal

Date Issued: February 24, 2023

File: SC-2022-002875

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Aedan v. Village of Tahsis*, 2023 BCCRT 160

BETWEEN:

RITA ANN AEDAN

APPLICANT

AND:

VILLAGE OF TAHSIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about sewer blockage repair costs.
2. The applicant, Rita Ann Aedan, owns a house in the respondent municipality, Village of Tahsis (Village). Ms. Aedan says the Village failed to adequately maintain and repair the municipal sewer system as it is required to do, causing sewage to back up

into her bathtub and sinks. She claims \$3,701.60 for investigating and repairing the sewage blockage.

3. The Village says it cannot be found liable in nuisance under section 744 of the *Local Government Act* (LGA). The Village also denies any negligence. It says the sewer blockage was found in the section of the sewer system that Ms. Aedan is responsible for maintaining and repairing, under the Village's bylaws.
4. Ms. Aedan is self-represented. The Village is represented by an officer.

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 to what extent, if any, must the Village reimburse Ms. Aedan her plumbing and investigation costs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one the applicant, Ms. Aedan, must prove her claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, but only refer to that which is relevant to explain my decision. I note that the Village did not submit any documentary evidence, despite being given the opportunity to do so.
11. Ms. Aedan discovered sewage back-up in her bathtub, toilet, and kitchen sink on January 2, 2022. She hired Blake Birch, a general contractor, to investigate and repair the source of the sewer back-up. On January 31, 2022 Mr. Birch unearthed an uncapped cement sewer clean-out clogged with debris, and an old clay pipe that had broken off the clean-out. None of this is disputed and is supported by photos submitted by Ms. Aedan.
12. It is also undisputed that Mr. Birch repaired the clean-out and replaced the broken pipe. On February 4, 2022, Mr. Birch charged Ms. Aedan a total of \$3,071.60, for investigating, locating and fixing the sewer blockage.
13. Ms. Aedan says the Village should pay the investigation and repair costs, because the Village is responsible for maintaining and repairing the municipal sewer system. As noted above, the Village says Ms. Aedan is responsible for maintaining and repairing the clean-out and broken pipe, under the Village’s bylaws.

14. Ms. Aedan provided an October 19, 2022 statement from Mr. Birch, which says he located the clean-out and broken pipe not on Ms. Aedan's property, which is Lot 48, but on neighbouring Lot 47. Mr. Birch explained that he asked the neighbour for permission to go on their property and dig out the pipe and clean-out. I find this is consistent with Ms. Aedan's photos of the partially buried clean-out referencing a survey post, and copies of Plan VIP 88225 registered in the Land Title Office.
15. The Plan also shows that the edge of Lot 47 where the clean-out was located is subject to a Right of Way registered in favour of the Village. The Village does not deny that the clean-out and broken pipe were located on the right of way, so I accept that they were, based on Mr. Birch's statement and Ms. Aedan's photos. Ms. Aedan says the Village is responsible for repairing and maintaining that clean-out and pipe, because it is located on the Village's right of way.
16. I find responsibility for repairing and maintaining sewer system pipes is governed by the Village's Sanitary Sewer System Regulation Bylaw No. 645, 2021.
17. I pause here to note that Ms. Aedan says the Village misquoted and misapplied the bylaw in its submissions. My analysis below relies on the published bylaw, rather than either party's provided bylaw excerpts.
18. Bylaw No. 645 defines "Private Connection" to include all pipes and fittings, such as "inspection chamber or clean out" between the buildings with sewer service and where the service is linked to the municipal system. Based on Mr. Birch's statement and Ms. Aedan's photos, I find the debris filled clean-out and the broken clay pipe (the blockage) were part of the Private Connection between Ms. Aedan's buildings with sewer service and the municipal sewer system link.
19. Part D, section 4(a) of the bylaw says the Private Connection must be maintained by the "Owner", at their sole expense. The Village relies on this bylaw section in arguing that Ms. Aedan is responsible for the clean-out and the clay pipe. However, the bylaw specifically addresses sewer blockages, as discussed below.

20. Part D, section 4(a)(ii) of the bylaw says the Director will repair any blockage found outside the Private Connection. I agree that the Village is not liable to repair the clean-out or clay pipe under this section, as I find they are both found within the Private Connection.
21. However, Part D, section 4(a)(i) says the Owner is responsible for repairing a sewer blockage or system failure if the failure is found on “private property”. The bylaw defines “Owner” as the person registered with the Land Title and Survey Authority as “owner of land or a charge on land”. I find the right of way is a charge on land registered with the Land Title and Survey Authority. As the Village is the undisputed owner of that charge, I find it falls within the bylaw’s definition of owner” of the private property where the broken clay pipe and clean-out were found. I acknowledge that Ms. Aedan’s neighbour also falls within the definition of owner of the private property where the blockage was found, but I make no finding about the neighbour’s possible liability, given they are not a party to this dispute.
22. I also note that Part D, section 4(a) also says that, if any private connection or municipal system becomes blocked, or fails to function, the owner shall contact the Director, who will determine where the stoppage or blockage is located. I agree with Ms. Aedan that this part of the bylaw shows that the Village, acting through the Director of Infrastructure and Operation, has responsibility to investigate any sewer blockage or stoppage, whether it is suspected to be in a private connection or the municipal system.
23. Ms. Aedan says she contacted the Director, and that the Village sent employees to her property who attempted, but failed, to locate the source of the sewer back-up on Ms. Aedan’s property. This is supported by Mr. Birch’s statement and the Village does not dispute it. So, I find Ms. Aedan complied with the bylaw but that Village did not because it did not “determine where the stoppage or blockage is located”.
24. In summary, I find the Village is responsible for investigating any blockage found within the sewer system, under Part D, section 4(a) of the bylaw. I further find the Village is responsible for maintaining and repairing the clean-out and broken clay pipe

“blockage” under Part D, section 4(a)(i) of the bylaw because the blockage is located on private property and the Village falls within the bylaw’s definition of owner of that private property. ” So, I find the bylaw requires the Village to investigate and repair this particular blockage, found on the Village’s right of way.

25. I note that Ms. Aedan made no claim in nuisance and so find I need not consider whether the Village is protected from such a nuisance claim under the LGA.

26. I turn to consider the appropriate remedy.

27. As noted, Mr. Birch charged Ms. Aedan \$3,071.60, for investigating, locating and fixing the sewer blockage. Given Mr. Birch’s explanation of the extensive augering and hand-digging he engaged in to locate both the sewer pipes and the eventual cause of the blockage, I find the amount charged reasonable. In any event, the Village does not dispute the amount charged. So, I order the Village to reimburse Ms. Aedan the \$3,071.60 cost to locate and repair the sewer blockage.

28. The *Court Order Interest Act* applies to the CRT. Ms. Aedan is entitled to pre-judgment interest on the \$3,071.60 awarded from the date of the February 4, 2022 invoice to the date of this decision. This equals \$52.49.

29. 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. As Ms. Aedan was successful in her claim, I find she is entitled to reimbursement of \$200 in paid CRT fees. She claimed no dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order the Village to pay Ms. Aedan a total of \$3,324.90, broken down as follows:

- a. \$3,071.60 in damages,

- b. \$52.49 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$200 in CRT fees.

31. Ms. Aedan is entitled to post-judgment interest, as applicable.

32. 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. 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