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File: SC-2022-003699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hu v. Wang*, 2023 BCCRT 269

B E T W E E N :

SHUJUN HU

APPLICANT

A N D :

LU WANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Leah Volkers

INTRODUCTION

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

2. The applicant, Shujun Hu, lives in unit 1310. The respondent, Lu Wang, owns unit 1410, directly above unit 1310.

3. The applicant says water leaked from unit 1410's laundry room into unit 1310's electrical panel, damaging it. The applicant says she has paid to repair the damaged electrical panel, but the respondent has refused to reimburse her for the repair costs. The applicant claims $1,193.47 for electrical repairs.

4. The respondent does not dispute the water leak occurred, but says she was not negligent and is not responsible for the leak or the resulting damage. The respondent also disputes the applicant's claimed damages.

5. The parties are each self-represented.

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.

ISSUE

10. The issue in this dispute is whether the respondent unreasonably failed to prevent the leak.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove her 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.

12. Neither party provided evidence of strata lot ownership, but neither party disputes that the other is an owner. It is also undisputed that the applicant lived in unit 1310 and the respondent rented unit 1410 to 1 or more tenants at the time of the leak. No tenants are parties to this CRT dispute.

Washing machine leak

13. The parties do not dispute that unit 1410's washing machine leaked around January 4, 2022. Although the extent of the damage is disputed, the parties do not dispute that the leak caused some damage to unit 1310's electrical panel. Finally, it is undisputed that the respondent paid the strata corporation around $500 for emergency repairs following the leak. Based on the evidence before me, I find it is unclear what those emergency repairs consisted of.

Analysis

14. The applicant argues that the respondent's payment to the strata corporation is proof that the respondent is responsible for the water damage and must pay for the damage to the applicant's unit as well.

15. The respondent provided the strata corporation's bylaws in evidence. The applicant does not dispute this evidence, so I accept these are the correct strata corporation bylaws. The respondent says she paid the strata corporation's leak repair invoice, and says to see the "attached building bylaw". Although the respondent does not refer to a specific bylaw, I find she argues that she paid the strata's repair invoice as required by the bylaws. Bylaw 31(7)(a)(i) makes the respondent strictly liable to the strata corporation for any damage caused by her washing machine. So, I find the respondent likely paid the strata for leak repairs as required by the bylaws. However, bylaw 37 does not make an owner strictly liable to another owner for any damage caused by a washing machine, so I find the respondent's payment to the strata corporation does not prove that the respondent is also responsible to pay the applicant for the alleged damage to unit 1310. I find none of the bylaws in evidence make an owner strictly liable to another owner for damage to other strata lots.

16. Although the applicant does not use these words, I find she also relies on the law of negligence and nuisance.

17. As set out in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, to succeed in negligence, the applicant must prove:

    a. The respondent owed her a duty of care,

    b. The respondent 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.

18. I find that the respondent owed the applicant a duty of care as a neighbouring strata lot owner. Although the extent of the damage is disputed, it is undisputed that the washing machine leak damaged unit 1310's electrical panel, which I find was a reasonably foreseeable consequence of a water leak. The question is whether the respondent's conduct fell below the standard of a reasonable 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 responsible for damage in unit 1310 just because the leak originated in unit 1410. See *Theberge v. Zittlau*, 2000 BCPC 225, at paragraphs 33 to 36.

20. Here, this means that the applicant must prove the same thing to succeed in negligence or nuisance. She must show that the respondent unreasonably failed to prevent the leak or to prevent further damage once the leak was discovered.

21. The applicant did not specifically allege that the respondent unreasonably failed to prevent the leak or further damage. Rather, the applicant argues that the respondent is responsible for any damage that occurred when unit 1410's washing machine leaked. As noted above, the respondent is not strictly liable or automatically responsible for damage. For the following reasons, I find the evidence does not show the respondent unreasonably failed to prevent the leak or further damage.

22. The evidence does not show that the washing machine had previously experienced problems or showed signs of imminent failure before the leak at issue in this dispute. As noted, unit 1410 was rented to a tenant at the time of the leak. The respondent says the tenant had not reported any prior leaks, and the applicant did not allege there were any prior leaks. So, the evidence indicates the leak was likely spontaneous.

23. The respondent says she was advised of the washing machine leak by "First Service" on January 4, 2022. She says a technician repaired the washing machine leak on January 6, 2022. As discussed above, it is undisputed that the respondent also paid the strata corporation for emergency leak repairs. The evidence does not show any further leaks since then. I find the respondent did what a reasonable strata lot owner would do in the circumstances. As noted, the applicant bears the burden of proving her claims. Here, I find the applicant has not provided evidence that shows the

respondent acted unreasonably with respect to the washing machine leak, and so I dismiss the applicant's claim.

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. As the applicant was unsuccessful, I dismiss her fee claim. The respondent did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDER

25. I dismiss the applicant's claims and this dispute.

Leah Volkers, Tribunal Member