



Civil Resolution Tribunal

Date Issued: May 4, 2023

File: SC-2022-005173

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. Assertive Northwest Property Management Group Inc*,
2023 BCCRT 369

B E T W E E N :

JIAN LI

APPLICANT

A N D :

ASSERTIVE NORTHWEST PROPERTY MANAGEMENT GROUP INC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about liability for interior water damage in a strata lot (SL22) within a strata corporation (strata). The applicant, Jian Li, co-owns SL22. He says the respondent strata manager, Assertive Northwest Property Management Group Inc (Assertive), incorrectly advised him that the strata would repair a water-damaged

interior wall. He says that he allowed the strata's contractors to remove damaged drywall based on that false assurance. He seeks \$2,500 as damages for a combination of drywall repairs and the "mental impact of living in a damaged unit with a broken wall."

2. Assertive denies liability. It says I should dismiss the claims because they are properly against the strata and within the CRT's strata property jurisdiction, rather than small claims. It also says that Mr. Li lacks standing.
3. Mr. Li represents himself. An employee or principal represents Assertive.
4. For the reasons that follow, I dismiss Mr. Li's claims.

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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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.

The CRT's Jurisdiction

10. As noted above, Assertive says Mr. Li's claims falls within the CRT's jurisdiction over strata property and not small claims disputes. Contrary to Assertive's submission, I find that if I lack jurisdiction, I should refuse to resolve Mr. Li's claims under CRTA section 10, rather than dismiss them. Mr. Li says the CRT should resolve the dispute and that his claim is based in the tort of negligence.
11. CRTA section 118 says the CRT has jurisdiction, or legal authority, to resolve a claim for damages. This includes claims based in tort like negligence. CRTA section 1(2) says that a claim that may be properly classified as either a CRT small claim or another category within the CRT's jurisdiction must be decided in the other category.
12. Mr. Li claims damages that are within the CRT's small claims monetary limit of \$5,000. So, I find his claims are within the CRT's small claims jurisdiction. I find they are not within another CRT claim category, such as the CRT's strata property jurisdiction. This is because I find they do not fall under the categories outlined under

CRTA section 121(1), such as the money owing under the *Strata Property Act (SPA)* or the interpretation of the SPA. So, I will decide this dispute on its merits.

The Parties' Late Submissions

13. Assertive emailed late submissions to the CRT and Mr. Li. Mr. Li responded as well. CRT staff did not upload these submissions and I have not viewed them. Consistent with the CRT's mandate, which includes speed and proportionality, I find it unnecessary to view these additional submissions. This is because I have decided in Assertive's favour, as discussed below, and I find that in the circumstances Mr. Li's response would be unlikely to affect my decision.

ISSUE

14. The issue in this dispute is whether Assertive was negligent, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant Mr. Li must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

16. As stated above, a title search shows Mr. Li co-owns SL22 in the strata. Mr. Li exchanged emails with the building manager, DL, in October 2019. The emails show that a washing machine leaked in the strata lot above SL22. This undisputedly caused water to enter SL22 and damage its interior drywall.

17. At the time, Assertive acted as the strata manager. Mr. Li says that the strata's agency agreement with Assertive shows that Assertive is responsible for maintenance and repairs of common areas and common property. Having reviewed the contract, I disagree. It says the strata is responsible for such items. Mr. Li's submission is also contrary to SPA section 3. It says the strata is responsible for managing and

maintaining common property and common assets. I also find that Mr. Li is claiming compensation for damage done to SL22, rather than any common property, so his submission would not assist him even if it were true.

18. Mr. Li's emails to DL and the December 2019 strata council meeting minutes show that the strata's contractors entered SL22 to address the water damage. They ran dehumidifiers and I find it likely that they removed interior drywall as well, as alleged by Mr. Li.
19. Mr. Li says he let the strata's contractors enter SL22 based on DL's assurance that Assertive would take responsibility to rebuild the wall. Assertive says that DL is the building manager for the strata and is not an employee or representative for Assertive. Based on the evidence, I agree with Assertive for the following reasons.
20. In the emails DL identified themselves as the strata's building manager. They gave no indication they were associated with Assertive. Consistent with this, the December 11, 2019 strata council meeting minutes identified DL as the building manager and Assertive separately as the strata's agent. I will return to this point below.
21. Over a year passed before Mr. Li began emailing DL about the removed drywall, from March to May 2021. Mr. Li asked DL when the interior wall would be repaired or rebuilt. DL replied in an April 13, 2021 email that the strata would not cover the repairs. Consistent with my earlier findings, DL did not identify themselves as an employee or representative for Assertive.
22. Around this time, Assertive wrote a March 30, 2021 letter to the strata. It said that Assertive had decided to terminate its contract as strata manager effective March 31, 2021. I note that DL emailed Mr. Li several times about the drywall after Assertive terminated its contract with the strata. This is consistent with DL's role being separate from Assertive's.

Was Assertive negligent?

23. In order to prove negligence, Mr. Li must show Assertive owed a duty of care, failed to meet the applicable standard of care, that the failure caused Mr. Li's loss, and that the loss was reasonably foreseeable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
24. Mr. Li says Assertive was negligent because DL misled him. As noted above, I find the evidence shows that DL never acted for Assertive, either as its agent, employee, or otherwise. DL clearly identified themselves as the strata's building manager in their email signature. DL never suggested in the emails to Mr. Li that they represented Assertive. Mr. Li largely relied upon his emails with DL to prove his claims. There is no indication he ever asked or emailed Assertive for assistance. As I find the emails do not assist him, I find that Assertive did not cause Mr. Li's alleged loss.
25. I would also dismiss Mr. Li's claim because I find his loss largely unproven. Mr. Li says the wall cost \$1,600 to repair but did not provide a receipt, invoice, or estimate to show this. As for the remaining claim for "mental impact", damages for mental distress generally requires an evidentiary basis. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253, paragraphs 48 to 49. Mr. Li provided no such evidence here.
26. Given my above conclusions, I need not address Assertive's argument that Mr. Li lacks standing or that his claims should properly be against the strata.
27. 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. I dismiss Mr. Li's claim for reimbursement of CRT fees. The parties claim no dispute-related expenses.

ORDER

28. I dismiss Mr. Li's claims and this dispute.

David Jiang, Tribunal Member