



Civil Resolution Tribunal

Date Issued: August 18, 2023

File: SC-2022-007826

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Meier v. Dietz*, 2023 BCCRT 701

B E T W E E N :

JOHN MEIER

APPLICANT

A N D :

ROSITTA DIETZ and SOLUS TRUST COMPANY LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. John Meier lives below Rositta Dietz in a strata building. Ms. Dietz's toilet overflowed, causing over \$80,000 in damage and forcing Mr. Meier to relocate for over 5 months. Mr. Meier's insurance covered the damage, but they had to pay a \$1,000 deductible. Mr. Meier claims this amount from Ms. Dietz and Solus Trust Company Ltd., which is Ms. Dietz's attorney under a power of attorney. Mr. Meier

also wants me to order that if “this type of situation occurs again”, Ms. Dietz will pay their deductible. Mr. Meier is self-represented.

2. Ms. Dietz says that there is no evidence to confirm that she negligently clogged the toilet. A Solus employee represents Ms. Dietz. Solus did not file a Dispute Response for itself. I address this issue below.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT’s order may include any terms or conditions the CRT considers appropriate.
7. I note that there is no direct evidence from Ms. Dietz in this dispute. Often, when a party fails to provide clearly relevant evidence, the CRT will draw an adverse

inference. This means that the CRT will assume the party did not provide the evidence because it is unhelpful. As mentioned above, Ms. Dietz is represented by her attorney. The evidence also establishes that she lives with the assistance of a home aid. There is no evidence before me to explain why Ms. Dietz has an attorney or care aid, but given the possibility it is related to a lack of capacity, I decline to draw an adverse inference here.

8. Also, the only documentary evidence Ms. Dietz provided is an email from an insurance adjuster, which she pasted into her submissions. Mr. Meier objected to me considering the email because Ms. Dietz did not provide a copy of the email. Instead, she said it was available “on request”. I did not ask for a copy of the email because I find that it includes no relevant information. All it does is set out the adjuster’s opinion about what the various plumbing reports do and do not prove. Those plumbing reports are in evidence, and it is the CRT’s role to determine what conclusions to draw from them.

ISSUES

9. The issues in this dispute are:
 - a. Should I find Solus liable for the \$1,000 since it is in default?
 - b. Is Ms. Dietz liable for the \$1,000 deductible?

EVIDENCE AND ANALYSIS

10. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.

Solus’s Liability

11. As mentioned above, Solus did not file a Dispute Response on its own behalf. I find that Solus was likely served with the Dispute Notice given it represents Ms. Dietz. This means that Solus is in default under the CRT’s rules, which require

respondents to file a Dispute Response. In general, when a respondent is in default, the CRT will assume liability against them. However, this is not automatic, and in the circumstances here I decline to find Solus liable despite its default status.

12. As mentioned above, Solus is named as Ms. Dietz's attorney under a power of attorney. Mr. Meier does not make any allegations against Solus or explain why they claimed against Solus. I find that there is no factual or legal basis for Mr. Meier to make a claim against Solus for an alleged water loss from Ms. Dietz's apartment. I dismiss Mr. Meier's claim against Solus.

The Leak

13. It is undisputed that on August 23, 2021, there was a substantial blackwater leak that originated in Ms. Dietz's bathroom that caused extensive damage in Mr. Meier's strata lot.
14. The only question before me is whether Ms. Dietz negligently caused the leak, and is therefore liable for the deductible. To prove negligence, Mr. Meier must show that Ms. Dietz owed them a duty of care, that she breached the applicable standard of care, and that she caused him damage as a result. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
15. As mentioned above, Ms. Dietz argues that there is no conclusive evidence of negligence. However, it is not necessary to prove a civil claim conclusively or with certainty. As an applicant in a civil claim, Mr. Meier must prove their claim on a balance of probabilities, which means they need only to show that it is more likely than not that Ms. Dietz negligently damaged their strata lot.
16. It is well established that an upstairs neighbour in a multi-unit strata building owes their downstairs neighbour a duty of care. The question is whether Ms. Dietz caused the leak with conduct that fell below the standard of care.
17. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, the court said that the standard of care of a "user of a toilet in a multi-unit building" is that the toilet user

must monitor the toilet after flushing to ensure the waste clears from the bowl, the tank and bowl refills without incident, and the water shuts off. In that case, the court found the toilet user negligent after his toilet overflowed and caused damage to the strata lot below, even though the exact reason for the blockage was unknown. While the court did not say so explicitly, I find this is because no matter what blocked the toilet, if the toilet user had stayed to monitor the toilet after flushing, he would have observed the problem and been able to shut the water off.

18. With that in mind, I turn to the evidence. The strata hired Westech Plumbing and Heating to clear the blockage. According to Westech's August 23, 2021 invoice, the plumber had to dismantle the drainage pipes for Ms. Dietz's toilet, which they accessed through Mr. Meier's bathroom ceiling, and cleared out "excessive amounts of paper and wipes". The plumber also said the leak's "main cause was lost down the pipe". I take this to mean that some of the blockage had cleared on its own and was no longer visible.
19. I find that the evidence clearly establishes that the source of the blackwater leak was Ms. Dietz's toilet. I agree with Ms. Dietz that the evidence about what blocked the drainpipe is not entirely conclusive because the blockage had partially cleared. In other words, it may not have been the paper and wipes the plumber observed. Still, I find that the evidence establishes that the toilet likely overflowed after Ms. Dietz flushed it, based on the location and description of the partial blockage and lack of any obvious alternative cause. Given the toilet overflowed enough to cause extensive damage to Mr. Meier's strata lot, I find that Ms. Dietz likely did not monitor the toilet after flushing. I therefore find that her conduct fell below the applicable standard of care, and that she is liable for Mr. Meier's deductible. I order Ms. Dietz to pay Mr. Meier \$1,000.
20. Mr. Meier also claimed \$104.31 for a water sensor to detect future leaks, which they say are an ongoing problem. While this may have been a prudent purchase, I find that it was their choice to buy it. I find that it does not remedy any loss or damage he suffered because of the leak. I dismiss this aspect of his claim.

21. Finally, Mr. Meier asks for an order that Ms. Dietz will be automatically liable for their deductible, which is now \$2,500, if there is a future leak. I decline to make an order about a hypothetical event. Ms. Dietz's liability for a future leak will depend on whether she was negligent, as it was here.
22. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Meier is entitled to pre-judgment interest on the deductible from August 23, 2021, to the date of this decision. This equals \$44.88.
23. 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 find that Mr. Meier was substantially successful, so he is entitled to reimbursement of \$125 in CRT fees.
24. Mr. Meier also claims \$45 as the cost of "expert evidence". However, there is no expert report in evidence. Instead, there is a \$45 invoice from the strata council president that appears to be for her time finding relevant documents for Mr. Meier.
25. A strata corporation may charge an owner up to \$0.25 per page for records under section 35 and 36 of the *Strata Property Act* and associated regulation. However, there is nothing in the SPA that would permit a strata council president to charge an owner personally for that same service. I therefore find that this is not an appropriate dispute-related expense, and I dismiss it.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Dietz to pay Mr. Meier a total of \$1,169.88, broken down as follows:
 - a. \$1,000 in damages,
 - b. \$44.89 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.

27. Mr. Meier is entitled to post-judgment interest, as applicable.

28. I dismiss Mr. Meier's remaining claims.

29. 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.

Eric Regehr, Vice Chair