



Civil Resolution Tribunal

Date Issued: October 13, 2023

File: SC-2023-001904

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lindsey v. Papove*, 2023 BCCRT 867

BETWEEN:

DAVID EDWARD LINDSEY

APPLICANT

AND:

SARAH PAPOVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. This is a dispute about a broken window.
2. The applicant, David Edward Lindsey, rented his condo to the respondent, Sarah Papove, and her family. Mr. Lindsey says that there was a crack in the window after

Ms. Papove left the condo. Mr. Lindsey claims \$1,390.07 for the cost to fix the window.

3. Ms. Papove says that the window was not cracked when she and her family left the condo. She argues that the crack was caused by changes in temperature.
4. All parties are self-represented.

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 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.
6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. Section 42 of the CRTA says that 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.

ISSUES

9. The issue in this dispute is whether Ms. Papove should pay Mr. Lindsey \$1,390.07 to repair the window.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Lindsey must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision. Ms. Papove did not provide any documentary evidence or submissions, other than those contained in the Dispute Response, despite having the opportunity to do so. Mr. Lindsey did not provide any reply submissions.
11. It is undisputed that Ms. Papove rented Mr. Lindsey's condo from December 29, 2022, to January 4, 2023. Mr. Lindsey says he found a crack in the window after Ms. Papove and her family left. Mr. Lindsey provided a photo showing damage to a nearby wall from a chair and another photo showing handprints on the cracked window. Mr. Lindsey argues that the crack was caused by an impact from a chair or person during Ms. Papove's tenancy.
12. Ms. Papove says that the window was not cracked when she and her family were staying in the condo. She says the long single crack in the window is likely a "stress crack" caused by a sudden change in temperature. She says that temperatures were below minus 30 Celsius during her stay and believes this caused the crack. She argues that an impact from a chair or person would show a starburst cracking pattern with a central impact point.
13. Mr. Lindsey points to emails from Ms. Papove where she initially agreed to pay for the window repair. I find these emails do not prove that Ms. Papove was aware of the crack in the window during her tenancy. Ms. Papove says clearly in her email that she is shocked to hear the window is broken.

14. I find that both parties have provided reasonably plausible explanations for the damage to the window. However, neither party submitted expert evidence and I am unable to determine what caused the window to crack. As the applicant, the burden of proof is on Mr. Lindsey to prove his claim. I find Mr. Lindsey has failed to meet his burden of proving that Ms. Papove or her family caused the damage to the window. I dismiss Mr. Lindsey's claim.
15. Mr. Lindsey's Dispute Notice also claims for minor damage to the window case and scratches on a chair. However, these claims appear to be minor and Mr. Lindsey did not claim a monetary remedy for these issues. I make no award for the minor damage to the window case or scratches on the chair.
16. 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. As the unsuccessful party, Mr. Lindsey is not entitled to any reimbursement. Ms. Papove was successful but did not pay any tribunal fees or claim any dispute-related expenses.

ORDERS

17. I dismiss Mr. Lindsey's claim and this dispute.

Peter Mennie, Tribunal Member