



Civil Resolution Tribunal

Date Issued: January 16, 2024

File: SC-2023-002861

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Abodiyat v. Andriopoulos*, 2024 BCCRT 041

BETWEEN:

SOROOSH ABODIYAT

APPLICANT

AND:

SOTIRIOS ANDRIOPOULOS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This small claims dispute is about water damage in a strata building.
2. The applicant, Soroosh Abodiyat, owns and lives in unit 1002. The respondent, Sotirios Andriopoulos, owns unit 1102 and rents it to a long-term tenant. Sotirios

asked to be addressed by their first name and did not provide pronouns, so I have used gender-neutral pronouns in this decision.

3. In July 2022, water leaked from unit 1102 into unit 1002, damaging the ceiling and possibly other areas. Mr. Abodiyat made an insurance claim. He asks for \$1,000 to cover his insurance deductible and \$600 to compensate him for lost work time.
4. Sotirios says they were not negligent and this was a spontaneous leak that could not have been predicted or prevented. They say once the tenant told them about the leak, they promptly called a plumber to fix it. Sotirios says I should dismiss the claim.
5. Each party is self-represented. As I explain below, I dismiss Mr. Abodiyat's claim.

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.
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 court.
9. Mr. Abodiyat asked the CRT to obtain or request copies of certain documents from the respondent and third parties. CRT dispute parties are already required to disclose

all relevant evidence in their possession. So, where Sotirios has not submitted documents, I am entitled to draw an adverse inference, which means I can assume that the evidence does not exist or would not help Sotirios, and I have done so where appropriate. As for third party requests, such as Mr. Abodiyat's request for Sotorios's plumber's written assessment of what caused the leak, the CRT's rules state that participants must first ask the third party for the evidence. If that is unsuccessful, they can issue a summons in consultation with a case manager. There is no suggestion that Mr. Abodiyat followed those steps here.

10. In final reply submissions, Mr. Abodiyat asked to submit text messages from Sotirios's tenant that he said showed it took over a month to make repairs and the leak recurred in between. I decided not to pause this dispute to arrange for Mr. Abodiyat to provide this possible evidence because, as I explain below, it would not change the outcome.

ISSUE

11. The issue in this dispute is whether Sotirios is liable in nuisance or negligence for the water leak, and if so, what are Mr. Abodiyat's damages.

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Mr. Abodiyat must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. The All Elements emergency report in evidence says the water leak happened on July 8, 2022. It is not clear how the leak was discovered, but the strata called All Elements to unit 1002, where a technician found water dripping from the kitchen ceiling and multiple water stains. The emergency report says the source was the dishwasher in the unit above, which I infer means unit 1102. All Elements installed drying equipment in the kitchen. Mr. Abodiyat says he had to vacate unit 1002 and it took 10 days to complete repairs. At the strata's request, Sotirios paid All Elements'

emergency response invoice. Mr. Abodiyat paid a \$1,000 deductible to Canstar Restorations.

14. As discussed in the non-binding but persuasive decision *Zale et al v. Hodgins*, 2019 BCCRT 466, owners may be surprised to learn that they are responsible for repairs to their condo even though the source of the damage originated in another condo. Absent an applicable strata bylaw, which is not argued here, Mr. Abodiyat must show that Sotirios is liable in either negligence or nuisance.
15. To succeed in negligence, Mr. Abodiyat must prove that Sotirios owed him a duty of care, Sotirios breached the applicable standard of care, and he experienced a loss caused by the breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
16. Mr. Abodiyat says the water leak could have been avoided if Sotirios had performed proper preventative maintenance. He points to a February 2022 letter from the strata manager to all owners recommending owners replace the plastic water lines that supply water to appliances. Sotirios does not say whether they ever replaced the plastic water lines. However, there is no evidence that a water supply line failure caused the water leak. As noted, the emergency report said the source was the dishwasher. Mr. Abodiyat says, and I accept, that he has text messages from Sotirios's tenant stating that a clogged garburator caused the leak. Sotirios's plumber, Tom Apostolopoulos, said in an email that a clogged kitchen sink drain line caused the leak. These 3 explanations are not necessarily inconsistent – garburators are found inside kitchen sink drains. A clog in the drain or garburator could cause a dishwasher to fail to drain properly and then to leak. Ultimately, I find nothing turns on the leak's precise mechanism. What matters is that there is no evidence that a plastic supply line failed.
17. Mr. Abodiyat points out that landlords are required under the *Residential Tenancy Act* to maintain residential property in a state of repair that complies with health, safety and housing standards required by law. However, he does not point out what standard Sotirios failed to comply with, or what Sotirios should have done to prevent the clog or dishwasher leak. Mr. Abodiyat suggests Sotirios should have had an

“integrity management plan to prevent water leakage,” but the law does not expect perfection. The standard of care is that of a reasonable person in Sotirios’s position as a non-resident owner. It is undisputed that as soon as they were told about the leak, Sotirios contacted a plumber and told the tenant not to use the sink. I find that by doing these things, Sotirios did what a reasonable person would do.

18. Mr. Abodiyat asks Sotirios to provide a record of plumbing inspections. However, he does not provide evidence about how often a reasonable owner or landlord should have a kitchen drain or dishwasher inspected. There is no evidence of previous water leaks from unit 1102. This appears to have been a spontaneous leak. Further, there is no evidence that an inspection would have identified an issue with the drain or dishwasher and prevented the leak. I acknowledge Mr. Abodiyat’s final reply submissions that set out his detailed opinion that preventative maintenance could have prevented the leak. Mr. Abodiyat says he is a licensed “piping engineer” with 20 years of experience. I give this opinion little weight for 2 reasons. First, Mr. Abodiyat does not provide objective evidence of his qualifications. Second, a party generally cannot act as their own expert because they are not neutral about the dispute’s outcome. I find that the issues of what maintenance Sotirios should have performed and whether maintenance could have prevented this leak require expert evidence to prove, and there is no objective expert evidence before me.
19. Mr. Abodiyat says it took more than a day to reach Sotirios’s tenant while the leak continued, suggesting Sotirios breached an obligation to give the strata their tenant’s contact information. However, there is no objective evidence that the strata did not have the tenant’s contact information or was delayed in gaining entry to unit 1102. As well, there is no evidence that a delay in contacting the tenant made the leak worse.
20. Finally, Mr. Abodiyat says it took several weeks from when the leak was discovered to address the leak’s root cause. He says with due diligence, the leak could have been fixed within hours after it was discovered, not weeks. However, it is not clear how Mr. Abodiyat’s claimed damages – his insurance deductible and 6 hours of lost

work time – could have been avoided if the leak had been repaired sooner. I find there is no connection between the alleged failure to act quickly and the claimed loss.

21. Although Mr. Abodiyat did not specifically argue it, I also considered the law of nuisance. However, in disputes like this one, where the owner did not actively create the nuisance, they will not be found liable unless they knew or ought to have known of the facts creating the nuisance (see *Sadowick v. British Columbia*, 2019 BCSC 1249). In other words, an owner is not responsible for escaping water that they did not know about and could not reasonably be expected to know about. There is no evidence that Sotirios knew or should have known about the water leak before Mr. Abodiyat discovered it, so I find he is not liable in nuisance.
22. I conclude that there is insufficient evidence that Sotirios unreasonably failed to prevent the July 8, 2022 water leak. Therefore, Sotirios is not liable for the resulting damage, and I dismiss Mr. Abodiyat's claims.
23. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Sotirios was successful but did not pay CRT fees. I dismiss Mr. Abodiyat's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

24. I dismiss Mr. Abodiyat's claims and this dispute.

Micah Carmody, Tribunal Member