



Civil Resolution Tribunal

Date Issued: January 18, 2024

File: SC-2022-007207

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. Xue*, 2024 BCCRT 53

BETWEEN:

YUE CHEN

APPLICANT

AND:

STUART XUE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. Yue Chen owns unit 101 in a strata building. Stuart Xue owns unit 201, which is located directly above unit 101. In August 2022, water leaked from unit 201's dishwasher supply line into unit 101, damaging the kitchen ceiling. Ms. Chen claims \$1,167.85 for ceiling repairs, plus fees for filing this dispute.

2. Mr. Xue says the water escape from his unit was accidental and that he was not negligent. So, he says he is not responsible for Ms. Chen's claimed repair costs.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

ISSUE

7. The issue in this dispute is whether Mr. Xue unreasonably failed to prevent the water leak, and if so, what are Ms. Chen's damages?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Ms. Chen must prove her claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submissions and evidence but refer only to what is necessary to explain my decision.
9. It is undisputed that Ms. Chen was renting unit 101 to a tenant and that Mr. Xue also had a tenant or short-term rental occupant staying in unit 201 at the relevant time. I note Ms. Chen alleges that Mr. Xue was illegally using unit 201 as a short-term rental unit, but there is no other evidence before me supporting that allegation. In any event, I find that issue irrelevant to this dispute, and so I make no findings about it.
10. On August 8, 2022, Ms. Chen’s tenant advised her there was water leaking from the kitchen ceiling. The strata arranged for a plumber (Milani) to investigate, though there was some delay in Milani gaining access to unit 201, as discussed further below. Ultimately, on August 22, 2022, Milani discovered the leak was coming from unit 201’s dishwasher supply line and repaired it. Ms. Chen’s kitchen ceiling had to be re-painted due to water stains.
11. Ms. Chen says that because the water leak originated in unit 201, its owner Mr. Xue is responsible for the expenses she incurred to repair the water damage. Mr. Xue disagrees.
12. As discussed in the non-binding but persuasive decision in *Zale et al v. Hodgins*, 2019 BCCRT 466 at paragraphs 18 to 21, owners may be surprised to learn they are responsible for repairs to their strata lot even when the source of the damage originated in another strata lot. Absent an applicable strata bylaw, which is not argued here, Ms. Chen must show that Mr. Xue is liable in either negligence or nuisance.
13. To succeed in negligence, Ms. Chen must prove that Mr. Xue owed her a duty of care, he breached the applicable standard of care, and she sustained damage caused by the breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

14. A nuisance occurs when someone unreasonably interferes with the use or enjoyment of another person's property. However, if that person is not aware of the interfering problem and has no reason to know about it, then they did not act unreasonably and will not be liable (see for example *Zale*, involving a toilet overflow, and *Theberge v. Zittlau*, 2000 BCPC 255). Further, a landlord is not liable for their tenant's nuisance unless they specifically authorized the tenant to act in a way that was likely to cause the nuisance, or there was a high probability that the nuisance would result from the purposes for which the property was rented (see *Shahgaidi v. Zhang*, 2018 BCSC 2082 at paragraph 32).
15. I accept that Mr. Xue owed Ms. Chen a duty of care as the owner of a neighbouring strata lot. I find that Ms. Chen must essentially prove the same thing to succeed in either negligence or nuisance: that Mr. Xue failed to take reasonable steps to avoid causing water damage to Ms. Chen's strata lot.
16. Ms. Chen undisputedly contacted the strata manager on August 9, 2022, to request that someone investigate the leak her tenant had reported. The parties' emails with the strata show that on August 10, the strata arranged for Milani to come the next day, August 11, 2022, between 8 am and 10 am. Mr. Xue confirmed to the strata that Milani would be able to access unit 201 at that time.
17. I note that Ms. Chen says Mr. Xue should have given Milani access to unit 201 on August 10, 2022. However, I find there is no evidence the strata advised Mr. Xue that Milani was prepared to come on August 10, 2022, and so I find there is no basis to find he unreasonably failed to arrange access to unit 201 on August 10.
18. At 9:22 am on August 11, the strata emailed Mr. Xue that Milani was on site and there was no answer at his door. Mr. Xue responded at 9:23 am that someone should be there, but he was on his way and would arrive in 2 minutes. At 9:26 am, Mr. Xue emailed the strata that he had arrived, but the strata responded that Milani had already left and would be back around 1 pm instead. At 5:13 pm, Mr. Xue emailed the strata that he had waited, but Milani did not show up or call.

19. The evidence shows that Milani then emailed the parties on August 19, 2022 to follow up and arranged to access both units on August 22. Milani apologized to Mr. Xue for failing to notify him that it was unable to return in the afternoon on August 11. No explanation was provided by Milani or either party for the gap between Milani's initial attendance on August 11 and its follow up on August 19. As noted, Milani undisputedly diagnosed and repaired a leak in unit 201's dishwasher supply line on August 22. This is supported by Milani's August 31, 2022 invoice. It is also undisputed that water stopped leaking into unit 101 after Milani's repair work.
20. As noted, Mr. Xue was not living in unit 201 at the relevant time. I accept that Mr. Xue first learned that water was leaking into unit 101 on August 10, 2022, when the strata advised that Milani would need to access his unit the next morning. However, that does not mean Mr. Xue was aware the water leak originated from his unit on August 10. Mr. Xue says he did not see any obvious signs in his unit of a water leak, such as pooling water on the floor, when he was there on August 11. I find this is likely true because if there were obvious signs of a water leak inside his unit, I find it unlikely Mr. Xue would have waited 11 days for Milani to return without following up or performing his own investigations.
21. Essentially, Ms. Chen argues that Mr. Xue was negligent for failing to provide access to unit 201 when Milani was scheduled on August 11, 2022. However, I find Mr. Xue acted reasonably in the circumstances. I accept Mr. Xue's evidence that he had asked his tenant to let Milani into his unit on the morning of August 11, which is consistent with his email to the strata that "someone should be there". I find nothing unreasonable about Mr. Xue asking his tenant to let a plumber into the unit.
22. Once he discovered the tenant failed to provide access, Mr. Xue arrived within 5 minutes to do so himself. Mr. Xue also stayed all afternoon, but Milani never arrived. There is no evidence that Mr. Xue was responsible for the delay in rescheduling Milani's attendance until August 22, 2022. I find Ms. Chen has not established there was something more Mr. Xue should reasonably have done to provide access to his unit for the leak investigation.

23. I note that Ms. Chen provided an October 16, 2023 statement from her tenant, TF. TF stated that they asked unit 201's tenant about the leak sometime after Milani repaired it, and the tenant said that the dishwasher had overflowed, but they did not get it fixed and continued to use it.
24. I find TF's statement is hearsay. While the CRT has discretion to accept hearsay evidence, I find it would be unfair to do so here. I find the statement too vague to be reliable because TF did not name the person they allegedly spoke to or provide the date of the conversation. I also note the statement appears inconsistent with Ms. Chen's argument that unit 201's occupant was a short-term renter, given TF's alleged conversation happened weeks after the leak. It is unclear whether the person TF spoke to was the same occupant in unit 201 when the leak started. Mr. Xue also disputes the hearsay statement's truth, and there is no other evidence that Mr. Xue or unit 201's tenant knew the dishwasher supply line was leaking. For these reasons, I decline to accept Ms. Chen's allegation that the dishwasher "overflowed" and the tenant kept using it.
25. Further, even if I accepted that unit 201's tenant knew the dishwasher was leaking, there is no evidence they advised Mr. Xue about it. As noted above, Mr. Xue is not responsible for his tenant's nuisance unless certain circumstances are present, which I find do not exist here.
26. Overall, I find Mr. Xue was unaware the leak was coming from within his unit, and that he acted reasonably in providing access to his unit for the plumber to investigate the reported leak in unit 101. So, I find Ms. Chen has not proven Mr. Xue failed to take reasonable steps to avoid causing water damage to her unit. It follows that I find he is not liable in either negligence or nuisance.
27. Given that I find Mr. Xue is not responsible for the leak in either negligence or nuisance, I dismiss Ms. Chen's claim.
28. 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 Ms. Chen was unsuccessful, I find she is not entitled to reimbursement of paid CRT fees or claimed dispute-related expenses.

29. As the successful party, I award Mr. Xue \$50 as reimbursement of his paid CRT fees. Initially, he also claimed \$500 for legal advice. However, in submissions, he says he decided not to hire a lawyer after all and does not seek to recover legal fees at this time. So, I find he withdrew his claim for legal fees. In any event, the CRT does not normally award legal fees in small claims disputes except in extraordinary circumstances, and I find there are none here. So, I would have dismissed Mr. Xue's request for reimbursement of legal fees for that reason.

ORDERS

30. Within 21 days of the date of this decision, I order Ms. Chen to pay Mr. Xue \$50 as reimbursement of his CRT fees.
31. Mr. Xue is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
32. I dismiss Ms. Chen's claims.
33. 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.

Kristin Gardner, Tribunal Member