



Civil Resolution Tribunal

Date Issued: March 14, 2024

File: SC-2023-003591

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anderson v. Darby*, 2024 BCCRT 263

BETWEEN:

CHRISTOPHER JAMES ANDERSON

APPLICANT

AND:

IAN DARBY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. Christopher James Anderson and Ian Darby are neighbours. Mr. Anderson says Mr. Darby damaged his house when a tree he was cutting fell on it. He claims \$4,620 for the repairs. Mr. Anderson is self-represented.

2. Mr. Darby says the tree damage to Mr. Anderson's house was an act of nature, and he is not responsible for it. He says he offered to refund Mr. Anderson his \$1,000 insurance deductible and to fix other damage himself as a gesture of good faith, but Mr. Anderson refused. Mr. Darby is also self-represented.

JURISDICTION AND PROCEDURE

3. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
4. CRTA section 39 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, he 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 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 an oral hearing is not necessary. I also note in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found oral hearings are not necessarily required where credibility is an issue.
5. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

6. Where permitted by CRTA section 118, 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.

ISSUE

7. The issue in this dispute is whether Mr. Darby is responsible for the damage caused to Mr. Anderson's house by the falling tree, and if so, whether Mr. Anderson is entitled to his claimed damages.

EVIDENCE AND ANALYSIS

8. As the applicant in a civil proceeding, Mr. Anderson must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to information I find relevant to explain this decision.

Negligence

9. It is undisputed that on January 27, 2023, a tree on Mr. Darby's property fell onto Mr. Anderson's house damaging his roof, gutter, and window. While Mr. Anderson does not specify the legal basis for his claim, I find he argues Mr. Darby negligently cut down his tree. Mr. Darby denies negligence and says a "gust of wind" caused the tree to fall.
10. To prove negligence, Mr. Anderson must show Mr. Darby owed him a duty of care, Mr. Darby breached the standard of care, Mr. Anderson sustained damage, and the damage was caused by Mr. Darby's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
11. As Mr. Anderson's neighbour, I find Mr. Darby owed him a duty of care to take reasonable steps to avoid trees on his own property falling and damaging Mr. Anderson's property. Mr. Anderson suggests that while Mr. Darby was cutting down

a tree with a chainsaw, he did not take care to ensure it fell in a direction that would avoid damaging Mr. Anderson's house.

12. For his part, Mr. Darby says he was pruning the tree on a calm day when an unexpected gust of wind caused it to lean and then fall towards Mr. Anderson's house. Mr. Darby does not explain the steps he took to ensure the tree would otherwise fall away from Mr. Anderson's property. Also, Mr. Darby's evidence is contradictory. In submissions, he says he was pruning the tree when the gust occurred. Yet, he also says no one was near the tree at the time of the gust, and he was 40 feet away near his garage. Mr. Darby submitted a statement from his stepson that said the gust picked up when Mr. Darby was in or near the garage. The statement further indicated Mr. Darby's stepson ran over to tell Mr. Darby the tree was falling, at which point they both ran back to witness it fall on Mr. Anderson's house.
13. I find the inconsistencies in Mr. Darby's evidence undermines his credibility. I prefer the video evidence from Mr. Anderson's doorbell camera that shows the moment the tree falls. In the footage, there appears to be a slight breeze rustling the branches of other background trees as well as a tarp covering a boat. However, there is no evidence of a wind strong enough to fell a tree the size of the one that comes down. Photos in evidence also show a clean cut tree stump rather than an uprooted trunk. Mr. Darby says the part of the tree left in the ground was later cut, which is the reason for the clean cut. Even if this is the case, it does not explain how the tree would have fallen without a strong wind, which I find from the doorbell camera footage was absent.
14. Overall, I find the evidence is most consistent with Mr. Darby having cut down the tree and miscalculating the direction of the fall. So, I find Mr. Darby's behaviour fell below the standard of a reasonably prudent neighbour pruning or cutting their tree.
15. Since it is undisputed that the falling tree caused damage to Mr. Anderson's roof, gutter, and window, I find Mr. Anderson has proven Mr. Darby was negligent.

Damages

16. Mr. Anderson claims \$4,620 for the cost of repairing the damage to his house. Mr. Darby says Mr. Anderson should have submitted a claim to his own insurance provider, for which Mr. Darby would have paid the \$1,000 deductible, or alternatively, should have allowed Mr. Darby the chance to fix the damage himself. He also says Mr. Anderson paid too much for the repairs.
17. The law says Mr. Anderson's insurance coverage has no impact on Mr. Darby's liability or the damages he is required to pay. The reason for this rule is that the benefits of insurance should flow to the person who bought the insurance, not the person who caused damage (see *Cunningham v. Wheeler*, 1994 CanLII 120 (SCC), and *Kaur v. Tse*, 2020 BCSC 1072 at paragraph 147).
18. Further, I find Mr. Anderson had no obligation to allow Mr. Darby the opportunity to fix the damage caused by his own negligence. In any event, as Mr. Anderson notes, there is no evidence Mr. Darby was qualified to do so.
19. Finally, Mr. Anderson submitted a statement from Blair Deptuck, a journeyman carpenter who completed the repairs to Mr. Anderson's house. Blair Deptuck indicated they priced the repair work at "current market values for materials and labour" to return the house to its condition before the tree fell on it. Blair Deptuck also noted the damage to the vinyl window frame meant the entire window needed replacement because no repair method would reinstate the window's weather resistance and durability to the same level as before the damage occurred. Mr. Darby did not challenge Blair Deptuck's qualifications. I find as a journeyman carpenter, Blair Deptuck is qualified to provide an expert opinion on the repairs needed to fix the damage caused by the tree falling on Mr. Anderson's house. There is nothing to suggest they overcharged Mr. Anderson for the repairs, and I find the \$4,620 Mr. Anderson paid Blair Deptuck, as shown in the invoice in evidence, was reasonable.
20. Based on the above, I order Mr. Darby to pay Mr. Anderson \$4,620 for the repairs to Mr. Anderson's house.

INTEREST, CRT FEES, AND EXPENSES

21. The *Court Order Interest Act* applies to the CRT. Mr. Anderson is entitled to pre-judgment interest on the \$4,620 damages award from March 24, 2023, the date of Blair Deptuck's invoice, to the date of this decision. This equals \$171.61.
22. 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 Mr. Anderson is entitled to reimbursement of \$175 in CRT fees. Mr. Anderson did not claim dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Mr. Darby to pay Mr. Anderson a total of \$4,966.61, broken down as follows:
 - a. \$4,620 in damages for negligence,
 - b. \$171.61 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
24. Mr. Anderson is entitled to post-judgment interest, as applicable.
25. This is a validated decision and order. 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.

Megan Stewart, Tribunal Member