



Civil Resolution Tribunal

Date Issued: April 29, 2024

File: SC-2023-005475

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sound v. MacLeod*, 2024 BCCRT 405

BETWEEN:

PATRICIA SOUND

APPLICANT

AND:

JASON MACLEOD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute between neighbours about a tarp. Patricia Sound stored some belongings in her yard and wanted to keep them dry. To do that, in August 2022, she installed a tarp on the side of her fence facing Jason MacLeod's backyard. Ms. Sound

says she had Mr. MacLeod's permission to access the fence through Mr. MacLeod's yard and to install the tarp. Mr. MacLeod says the details were not clear when he consented, and he came home to a 6-by-8-foot eyesore in the middle of his fence, directly facing his deck. Mr. MacLeod asked Ms. Sound to remove the tarp, but she refused. Later, Mr. MacLeod cut and removed 2/3 of the tarp. Ms. Sound replaced the tarp with a different tarp, allegedly trespassing on Mr. MacLeod's property to do so. Mr. MacLeod removed that tarp and threw it over the fence. Finally, Ms. Sound reinstalled that second tarp by hanging it without trespassing. The second tarp remains in place.

2. Ms. Sound wants \$500 to replace the first tarp that Mr. MacLeod cut, plus some wood and hardware she used to secure the tarp, and installation costs. Mr. MacLeod says Ms. Sound has exaggerated her costs. He also says that he had to spend money to hide the tarp from his view with a fence and trees.
3. Each party is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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 court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is Ms. Sound entitled to compensation for the damaged tarp, and if so, how much?
 - b. Is Mr. MacLeod entitled to any set-off for his fence and trees?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Sound must prove her 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.
10. The facts are straightforward, largely undisputed, and set out in the introduction above. Mr. MacLeod does not dispute that around April 21, 2023, he cut approximately 2/3 of Ms. Sound's first tarp and did not return the hardware securing the tarp to the fence.
11. Mr. MacLeod says he left in place the portion of the tarp that was over the lattice so fence and tarp together would still keep rain out. I disagree, as Ms. Sound's photos show that the rest of the fence has gaps and would not be waterproof without the tarp. That said, it does not matter. The tarp was on Ms. Sound's fence. Mr. MacLeod

does not dispute that the fence was several inches on Ms. Sound's property. I find that he trespassed and had no authority to cut the tarp. Mr. MacLeod does not argue otherwise. The only issue is what compensation is appropriate.

12. The damaged tarp was undisputedly an "end panel" from a large auto shelter for parking vehicles under. Ms. Sound says she planned to re-erect the auto shelter but cannot do so because she is now missing a panel. Ms. Sound provided an email from a salesperson who said the end panel is not sold separately and comes as part of the tarp kit for \$285.99 "plus shipping and tax". Ms. Sound also provided another listing for \$519.99, but I find that price likely includes the shelter frame. As there is no evidence about shipping costs, or that auto shelters are not sold locally, I find Ms. Sound is entitled to \$300 for the damaged panel.
13. Neither party provided evidence about the cost of the hex screws, washers and wood used to secure the tarp. On a judgment basis, I find Ms. Sound is entitled to \$10 for these things.
14. Lastly, Ms. Sound claims \$50 that she says she paid a handyman to install the tarp initially. The general principle is that tort damages should put the innocent party in the position they would have been if the wrongful conduct had not occurred (see *Nan v. Black Pine Manufacturing Ltd.*, 1991 CanLII 1144 (BCCA)). Ms. Sound had already incurred the initial tarp installation cost before Mr. MacLeod's trespass, so I find she cannot recover that cost. However, Mr. MacLeod's actions caused Ms. Sound to install a second tarp, twice. She did it once by herself and once with a friend, but she does not say how long either installation took. On a judgment basis, being conservative given the limited evidence, I find Ms. Sound is entitled to \$50 for that time and effort.
15. In total, Ms. Sound is entitled to \$360, subject to any allowable setoff. Mr. MacLeod says he constructed a new fence and planted privacy trees to cover the "eye sore" tarp. I note his new fence is a wire fence that does not obscure the tarp from view.

16. Mr. MacLeod provided receipts for various building materials, supplies, and fuel. What he did not provide is any legal foundation for his claim that Ms. Sound should pay his costs incurred to hide the tarp from his view. It is not enough that he considers the tarp an eyesore. The current tarp is on Ms. Sound's property, and she did not trespass to install it. I find there is no basis for any setoff.
17. The *Court Order Interest Act* applies to the CRT. Ms. Sound is entitled to pre-judgment interest on the \$360 from April 21, 2023, to the date of this decision. This equals \$18.31.
18. 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. Ms. Sound was generally successful, so I find she is entitled to reimbursement of \$125 in paid CRT fees. Ms. Sound claims \$40 for printing and courier costs, which the CRT does not generally award given it is an online tribunal. Ms. Sound says she had to courier some documents to ensure the CRT received them. She does not explain why she could not submit them through the CRT's online dispute-resolution portal or email them to the CRT. I find Ms. Sound has not established that these expenses were necessary. I dismiss her claim for expenses.

ORDERS

19. Within 14 days of the date of this order, I order Mr. MacLeod to pay Ms. Sound a total of \$503.31, broken down as follows:
 - a. \$360 in damages,
 - b. \$18.31 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
20. Ms. Sound is entitled to post-judgment interest, as applicable.
21. 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.

Micah Carmody, Tribunal Member