



Civil Resolution Tribunal

Date Issued: May 13, 2024

File: SC-2023-005571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jarvis v. Davenport*, 2024 BCCRT 448

B E T W E E N :

MARILYN D JARVIS

APPLICANT

A N D :

KELLY DAVENPORT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about payment to repair a shed and trim a hedge.
2. Marilyn D Jarvis and Kelly Davenport are neighbours. Mrs. Jarvis says Mrs. Davenport's overhanging hedge damaged her new shed. She claims \$1,040 for repairing the shed and trimming the hedge's encroaching branches.

3. Mrs. Davenport denies Mrs. Jarvis' claims. She also says she was never notified of any shed damage her hedge allegedly caused until she received a letter demanding payment for unauthorized work on her own property. Mrs. Davenport says her home security camera fully captures the property line between her property and Mrs. Jarvis's, and there is no footage of the work Mrs. Jarvis now claims for.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. 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 in the interests of justice.
7. CRTA section 42 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.
8. In submissions, Mrs. Jarvis also asks for an order that Mrs. Davenport be required to hire a licensed, insured arborist to inspect and remove any encroaching branches and debris from Mrs. Jarvis' property once a year. Ordering someone to do something, or to stop doing something, is known as "injunctive relief". Injunctive

relief is outside the CRT's small claims jurisdiction, except where permitted by CRTA section 118. There are no relevant CRTA provisions that would permit me to grant the injunctive relief Mrs. Jarvis seeks, so I decline to further address that requested remedy.

ISSUES

9. The issues in this dispute are:
 - a. Is Mrs. Davenport responsible for any damage to Mrs. Jarvis' shed?
 - b. If so, must she reimburse Mrs. Jarvis for the shed's repair and hedge trimming expenses?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mrs. Jarvis must prove her 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 necessary to explain my decision.
11. As noted above, Mrs. Jarvis says Mrs. Davenport's overhanging hedge branches damaged her new shed. Mrs. Jarvis says that following a heavy snowfall in December 2022, the branches were weighed down, snapped, and fell onto the shed's roof. She says she and her husband had previously warned Mrs. Davenport about damage the hedge could potentially cause to the shed, and had asked Mrs. Davenport to have the overhanging branches trimmed.
12. For her part, Mrs. Davenport says there is no evidence the shed was damaged at all. If the shed was damaged, Mrs. Davenport denies her hedge caused the damage, and says it was likely caused by the weight of the snow on the shed's roof.

13. While she does not set out the legal basis for her claim, I find Mrs. Jarvis alleges Mrs. Davenport's failure to trim and maintain her hedge either caused a nuisance or was negligent.
14. A nuisance is the substantial (non-trivial) and unreasonable interference with the use and enjoyment of property (see *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, at paragraph 19). If the interference causes physical damage, a court or tribunal will generally find it unreasonable (see *Royal Anne Hotel Co. v. Ashcroft*, 1979 CanLII 2776, at page 760).
15. To prove negligence, Mrs. Jarvis must show Mrs. Davenport owed her a duty of care, Mrs. Davenport breached the applicable standard of care, and Mrs. Jarvis suffered damage because of Mrs. Davenport's breach (see *Mustapha v. Culligan of Canada Ltd.* 2008 SDCC 27).
16. For both nuisance and negligence, I find the question of causation is determinative. The applicable test is the "but for" test (see *Sadowick v. British Columbia*, 2019 BCSC 1249). That is, but for Mrs. Davenport's alleged failure to trim and maintain her hedge, Mrs. Jarvis's shed would not have been damaged. If Mrs. Jarvis cannot prove this alleged failure caused the physical damage to her shed, then her claim cannot succeed in either negligence or nuisance.
17. Mrs. Davenport says there is no evidence of any damage to the shed at all. I disagree. While most of the submitted photos do not show a damaged shed, one of the close-ups shows a taped gap in the roof panels, which could be the result of damage. In addition, Mrs. Jarvis submitted a January 2, 2023 invoice for shed repair work and removal of encroaching hedge branches. Mrs. Davenport challenges the invoice. She says it was likely created by the Jarvis's friend, and the figures are inflated. I find Mrs. Davenport's assertions speculative, and I give them no weight.
18. However, though I have found there is evidence of damage to the shed's roof, I find Mrs. Jarvis has not proven it was caused by overhanging hedge branches. The repair invoice does not indicate the damage's cause, and none of the photos show hedge

branches on a damaged roof. The one photo of the gap in the roof panels does not show any branches in the vicinity. A photo showing a cut branch on the shed's roof does not show any roof damage. So, I find there is simply insufficient evidence that Mrs. Davenport's alleged failure to trim her overhanging hedge branches likely caused damage to Mrs. Jarvis's shed.

19. Since Mrs. Jarvis has not proven causation, I find her claim must fail.

20. 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 Mrs. Jarvis was unsuccessful, I dismiss her claim for CRT fees. Mrs. Davenport did not pay any fees, and neither party claims dispute-related expenses.

ORDER

21. I dismiss Mrs. Jarvis's claims and this dispute.

Megan Stewart, Tribunal Member