



Civil Resolution Tribunal

Date Issued: May 16, 2024

File: SC-2023-004435

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garnot v. Toor Enterprises Ltd.*, 2024 BCCRT 457

B E T W E E N :

SANTAYA GARNOT

APPLICANT

A N D :

TOOR ENTERPRISES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about allegedly deficient house construction.
2. The applicant, Santaya Garnot, bought a new home built by the respondent, Toor Enterprises Ltd. (Toor). Mrs. Garnot says the home's upstairs hall window leaked

from the time she moved into the home. She claims \$924.50 for the cost of repairs and a report from a roofer.

3. Toor says the leak was fully resolved in September 2022 through a home warranty claim filed by Mrs. Garnot.
4. Mrs. Garnot is self-represented in this dispute. Toor is represented by its principal, DT.
5. For the reasons set out below, I dismiss Mrs. Garnot's claim.

JURISDICTION AND PROCEDURE

6. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. 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 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. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUE

9. Is Mrs. Garnot entitled to \$924.50 in damages for a leaky window?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mrs. Garnot, as the applicant, must prove her claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
11. Mrs. Garnot says her home's upstairs hall window has leaked intermittently since February 2020. She says Toor did some repairs in February 2020, but the leak recurred in December 2021. Mrs. Garnot says Toor did some further repairs, but these did not fix the problem.
12. The evidence shows that in February 2022, Mrs. Garnot filed a claim with her home warranty provider, Aviva. According to an Aviva document Mrs. Garnot provided, Aviva investigated the claim and found no deficiencies related to potential defects in materials, labour, major distribution systems, building envelope, or structural components. Aviva concluded there was "no further action required by the builder", and denied the warranty claim.
13. Mrs. Garnot obtained a roofing report from another contractor, Cokala Contracting (Cokala), in October 2022. Cokala's report says that based on the size of the attic, the roof required at least 10 vents, but only 6 were installed. Cokala's report said that there was not enough venting to release airflow from the attic space. The report also said:

There are many different aspects and bump outs to the upper roof. This requires more forethought as to how many vents are required, where to properly place them and what style of vent to use. Those in charge of installing adequate venting and in the proper locations had failed to do so.
14. Cokala's report concludes by stating it had installed 4 more vents in the roof, as it had recommended this to the homeowner.
15. Mrs. Garnot says the window has not leaked since Cokala installed the additional roof vents.

16. Toor says the window leak was caused by ice damming in the roof gutters in winter 2020. Toor says it fixed this problem by adding additional insulation to the attic, and adding ridge venting to the roof. Toor says that any further window leaks after these repairs occurred because the homeowners failed to keep the gutters clear of ice. Toor says the homeowners did not maintain the heating equipment in the gutters, and possibly did not clear debris from the gutters in the fall.
17. As the party alleging the deficiencies, Mrs. Garnot has the burden of proving them. See *Absolute Industries v. Harris*, 2014 BCSC 287, at paragraph 61. Where a dispute's subject matter is technical or beyond common understanding, and is not obvious to a non-expert, it is necessary to produce expert evidence to prove the alleged deficiency. See *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 124 to 131.
18. I find the nature and cause of the alleged deficiencies in this case are not obvious to a non-expert. Neither party says the window leaks were caused by deficient window or window installation. Rather, based on Cokala's report, Mrs. Garnot says the leak was caused by excess moisture due to insufficient roof venting.
19. Toor says the roof venting was sufficient, particularly after it added the additional ridge venting. Toor says the roof's design is complicated, and that Cokala's report does not account for the ridge venting. Toor says Cokala was unaware of the location of all the roof vents. Toor also says there is no evidence of other signs of insufficient roof ventilation, such as sweating, condensation, or rot on the underside of the plywood.
20. CRT rule 8.3(2) says that for the CRT to accept a statement as expert evidence, the witness must state their qualifications. The author of Cokala's report did not provide their qualifications. Even accepting they are a roofing contractor, as their letterhead states, I find this does not establish their expertise. Specifically, I have no evidence about their training, qualifications, or professional experience. So, I find I cannot accept Cokala's report as expert evidence. As explained above, expert evidence is necessary to prove Mrs. Garnot's claim.

21. I also note that the insurance claim information from Aviva says there were no defects with the building's structure or envelope, and no need for further action by the builder. Although this is also not expert evidence as contemplated in the CRT's rules, there is no expert evidence to the contrary.
22. For these reasons, I find Mrs. Garnot has not proved that Toor's work was deficient. So, I dismiss her claim.
23. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Toor is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

24. I dismiss Mrs. Garnot's claims and this dispute.

Kate Campbell, Vice Chair