Civil Resolution Tribunal

Date Issued: June 13, 2024

File: SC-2023-003830

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Angel v. Rayani*, 2024 BCCRT 538

B E T W E E N :

ANA RODRIGUEZ ANGEL

APPLICANT

A N D :

SEMINBANU RAYANI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This small claims dispute is about water damage between condo units in a strata building.

2. Ana Rodriguez Angel owns unit 305, which is directly below Seminbanu Rayani's unit 405. Ms. Angel says there were at least two water leaks from unit 405's bathroom into unit 305's bathroom. She says Ms. Rayani negligently failed to do anything about the leaks. Ms. Angel claims $731.68 for two plumbing invoices, and $600 in inconvenience damages.

3. Ms. Rayani says it is not clear where the water came from. She says she cooperated with plumbing investigations and instructions from her insurer. She says I should dismiss the claim.

4. Each party is self-represented. As I explain below, I find Ms. Rayani did what a reasonable owner would do and is not liable, so I dismiss Ms. Angel's claim.

JURISDICTION AND PROCEDURE

5. 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.

6. The CRT conducts most hearings in writing, but it has discretion to decide the format of the hearing, including by telephone or videoconference. While an oral hearing would allow for cross-examination of witnesses, the factual disagreements in this dispute can be resolved on the parties' written submissions and the documentary evidence such as plumber's invoices. Further, neither party requests an oral hearing, and the small amount at stake weighs against one. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

7. 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.

8. Both parties provided late evidence. I accepted the late evidence because neither party objected, and each had the opportunity to respond to the other's late evidence. Ms. Angel's late evidence included photos that went along with a plumbing inspection report and a copy of the plumber's business licence. Ms. Rayani's late evidence was 2 emails from a claims representative and an insurance agency owner advising that its adjusters determined that Ms. Rayani was not negligent, so the insurer would not accept liability for the damage in unit 305. I give these opinions no weight. This is not an insurance coverage dispute, and the opinions are about the ultimate issue of liability, which is for the CRT alone to decide (see *Brough v. Richmond,* 2003 BCSC 512, at paragraph 6).

9. In the Dispute Response filed at the outset of this dispute, Ms. Rayani said she was seeking $1,000 for stress and time dealing with her insurer, the strata, and contractors. She did not file a counterclaim, so I find this requested remedy is not properly before me. I also find it is not a claim related to the CRT process and cannot be claimed as a dispute-related expense.

ISSUE

10. The issue in this dispute is whether Ms. Rayani is liable in nuisance or negligence for the water leaks, and if so, what are Ms. Angel's damages.

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Ms. Angel 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.

12. While neither party provided proof of ownership of their condo units, I accept Ms. Angel's unchallenged submissions that she owns unit 305 and Ms. Rayani owns unit 405. Unit 405 is on the top floor of the building. Both parties were living in their respective units when the leaks occurred.

13. The applicable law was set out in the non-binding but persuasive decision *Zale et al v. Hodgins*, 2019 BCCRT 466. Owners are generally responsible for repairs to their units even when the source of the damage originated in another unit. Absent an applicable strata bylaw, which is not argued here, Ms. Angel must show that Ms. Rayani is liable in either negligence or nuisance.

14. To succeed in negligence, Ms. Angel must show that Ms. Rayani owed her a duty of care (which is not disputed here), that Ms. Rayani breached the applicable standard of care, and that Ms. Angel experienced a loss caused by the breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). The standard of care is reasonableness (see *Burris v. Stone*, 2019 BCCRT 886). To succeed in nuisance, Ms. Angel must show a substantial and unreasonable interference with the use or enjoyment of her condo. If Ms. Rayani did not create the nuisance, then Ms. Angel must show that Ms. Rayani knew or ought to have known about it and failed to take reasonable steps to mitigate it (see *Sadowick v. British Columbia*, 2019 BCSC 1249, at paragraphs 89-92). With that, I find that Ms. Angel must prove the same thing to succeed in negligence or in nuisance. She must prove that Ms. Rayani unreasonably failed to prevent one or more leaks.

Water leaks

15. On May 12, 2022, around 5:30 pm, Ms. Angel observed water leaking form her bathroom ceiling fan. A video shows a steady drip of water. Ms. Angel knocked on Ms. Rayani's door but there was no answer. The strata corporation was able to reach Ms. Rayani in the evening. She says she thoroughly checked her bathroom and found no signs of a water leak.

16. Ms. Angel told her insurer because her bathroom had some ceiling damage. I infer that the leak stopped relatively quickly, as there are no plumbing invoices related to this leak, and Ms. Angel did not immediately repair her ceiling. The strata did not get involved.

17. There was a second leak in November or December 2022. Ms. Angel says after the second leak, her insurer and the strata suggested she hire a plumber to investigate. Ms. Angel hired Pioneer Plumbing & Heating Inc. On February 2, 2023, Pioneer cut open her bathroom ceiling to investigate the leak. The technician could not see anything leaking, but they could not access unit 405 to test anything. Ms. Angel paid Pioneer's $227.76 invoice for this work.

18. On February 17, 2023, Pioneer returned to run tests in unit 405. The invoice says the technician ran water from unit 405's bathroom tub and sink but was unable to reproduce the leak. The technician found some moisture in insulation (presumably between the units), but all the pipes were dry. The technician noticed water damage "on the side of unit 405's bath tub". From the photos, I find the technician meant the wall adjacent to where the tiling in unit 405's shower ends, which shows paint bubbling. The invoice said this wall damage "is consistent in line with the damage seen in unit 305's ceiling". However, the technician also recommended keeping the ceiling open longer to see if the damage could be reproduced as "it is not consistent". The technician also recommended that unit 405 be "more careful about water." Ms. Angel paid Pioneer's $353.92 invoice.

19. Ms. Angel says on March 17, 2023 she heard construction noises and went up to unit 405. She found that Ms. Rayani had hired a contractor to fix a leak in her bathroom. Ms. Rayani says her insurance company sent a contractor to investigate the leak. She says the contractor checked the walls and found moisture. She says they removed the sink and cabinet but could not confirm where the water was coming from.

Analysis

20. As noted above, Ms. Angel must show that Ms. Rayani unreasonably failed to prevent the water leak or to prevent further damage once the first leak was discovered.

21. Ms. Angel says that if Ms. Rayani had taken prompt action after the first leak, she would have prevented the second leak. However, there is no expert evidence to

support this, or even to link the first and second leaks. Even if the leaks were related, Ms. Rayani's conduct must be judged against that of an ordinary strata lot owner. I accept that after being advised of the May 2022 leak into unit 305's bathroom, Ms. Rayani checked and confirmed that there were no visible signs of a water leak in her bathroom. I find this is what a reasonable strata lot owner would have done. The leak stopped fairly quickly, the damage was minimal, and there was no confirmation that the water came from Ms. Rayani's bathroom. Given the circumstances, it was reasonable to take a "wait and see" approach. I find Ms. Rayani was not required to do anything more until the second leak occurred.

22. When the second leak occurred and Ms. Angel hired Pioneer to investigate, Ms. Rayani allowed Pioneer to inspect her bathroom for signs of a leak. I find this is what a reasonable strata lot owner would have done in the circumstances.

23. As noted, Pioneer did not identify the leak's source. I find Pioneer's vague admonition that Ms. Rayani should "more careful about water" is insufficient to prove that Ms. Rayani unreasonably caused or failed to prevent the leak. Pioneer's invoice does not explain what the technician suspected Ms. Rayani was doing, or not doing, that caused or contributed to the leak. While the water damage in unit 405's wall is odd, there is no explanation of what caused it. There is also no evidence that the wall damage pre-existed the second leak, which might have suggested Ms. Rayani should have done something sooner.

24. Ms. Rayani undisputedly had a contractor work on her bathroom in March 2023. Ms. Angel says she, her insurer, and the strata have all requested Ms. Rayani's contractor's report, but Ms. Rayani refuses to provide it. Ms. Rayani did not provide any contractor's report or invoice as evidence in this dispute, and did not explain why she failed to do so.

25. When a party fails to provide relevant evidence without explanation, the CRT may make an adverse inference. An adverse inference is when the CRT assumes that the reason a party did not provide evidence is that the evidence would not help their case. I am prepared to draw the adverse inference that Ms. Angel suggests, which is that

Ms. Rayani's contractor found and fixed a leak in her bathroom. However, that is insufficient to establish negligence. As explained above, it is not enough that Ms. Rayani's unit was the source of the water – the evidence must establish that Ms. Rayani unreasonably failed to prevent the leak. The evidence here does not go that far, even if the contractor found and fixed a leak.

26. For these reasons, I dismiss Ms. Angel's claim for the plumbing invoices and inconvenience damages.

27. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Rayani was successful but did not pay CRT fees. I dismiss Ms. Angel's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

28. I dismiss Ms. Angel's claims and this dispute.

Micah Carmody, Tribunal Member