Civil Resolution Tribunal

Date Issued: June 21, 2024

File: SC-2022-008608

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dimov v. Vaziri*, 2024 BCCRT 583

B E T W E E N :

PETAR DIMOV

APPLICANT

A N D :

FARID VAZIRI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Amanda Binnie

INTRODUCTION

1. This dispute is about alleged unreasonable noise between neighbours. The applicant, Petar Dimov, says the respondent, Farid Vaziri, installed a heating system which caused excessive noise in the applicant's home. He wants the respondent to fix the

unit and compensate him $5,000 for loss of enjoyment of his home. The respondent does not dispute they installed a heating system, but says they have now repaired it on the advice of their contractor and the applicant has not proven any damages.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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. 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.

5. 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.

6. Where permitted by section 118 of the CRTA, 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.

Limitation Act

7. The applicant says he became aware of this issue in October 2020. Neither party raised a limitation issue. The *Limitation Act* generally gives people 2 years to bring a claim from when it is discovered.

8. In *K&L Land Partnership v. Canada (Attorney General)*, 2014 BCSC 1701, the BC Supreme Court found that a nuisance continues for so long as the state of things causing the nuisance is suffered and said, at paragraph 58, the associated claims were not barred by the limitation period. I find this reasoning applies here, as the noises the applicant complains about have been continuous in the cooler months since they started. Therefore, even though the applicant first became aware of the noise more than 2 years before filing a dispute, I find his claims are not out of time.

9. That said, in *Brockman v. Valmont Industries Holland B.V.*, 2022 BCCA 80, the BC Court of Appeal found that in situations involving a continuing civil wrong, such as nuisance, damages for a continuing injury are recoverable only for the period within the applicable limitation period. The applicant filed this claim on November 20, 2022. So, I find that his claim for damages for several months in 2022 for the alleged noise are not out of time. Nothing ultimately turns on this given I have found below that the applicant's nuisance claim is unproven.

ISSUES

10. The issues in this dispute are:

    a. Did the respondent's heat pump cause unreasonable noise?

    b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant 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 the evidence and argument that I find relevant to provide context for my decision.

12. I infer the following from the applicant's emails to the respondent and the parties' submissions:

    a. The applicant and the respondent own neighbouring units. It is unclear whether these are townhouses or apartments, but I find nothing turns on this.

    b. The applicant and his wife live in their unit.

    c. The respondent rents out their unit.

    d. At some point, the respondent installed a new heating system. The heating system's location is unclear.

13. The applicant says initially there were no issues with the new heating system. However, after a couple of years, it began to make "rattling" noises. He says this affected his and his wife's sleep, so he emailed the respondent in April 2022. The applicant offered to replace the part of the system he thought was causing the noise. The respondent did not respond to this email, or 2 follow up emails.

14. In November 2022, the applicant had a plumber come and assess the heating system. The plumber found that the heating system had been installed sideways, which had caused the bearings to wear out. The applicant sent this information to the respondent, but still did not get a response. The applicant started this dispute shortly afterwards.

15. The applicant had the plumber return in October 2023. It is unclear what the purpose of this visit was, though the invoice says "the noise is from the pump" and recommends replacing it with a "proper pump".

16. The respondent did not submit any documentation. However, they say their own initial investigations showed that the noise was not coming from the heating system.

17. It is undisputed that the heating system was replaced at the respondent's expense, at some point during the CRT process.

Did the respondent's heat pump cause unreasonable noise?

18. The applicant says the heating system rattled when it turned on, which it would do automatically at various times. He says it was so loud he and his wife were unable to sleep.

19. The respondent does not dispute that the heating system was noisy before it was replaced, and I find that it was. However, that does not the end matter.

20. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64). The test is objective and is measured with reference to a reasonable person occupying the premises (see *Sauve v. McKeage et al*., 2006 BCSC 781). The objective requirement guards against those with abnormal sensitivity or unreasonable expectations (see *Sutherland v. Canada (Attorney General),* 2001 BCSC 1024).

21. The applicant relies on evidence from his plumber, who he says told him the noise was louder in the applicant's unit than in the respondent's because of the way the system is constructed. This is not included in either of the invoices from the plumber, and so I find this is hearsay. While the CRT may accept hearsay evidence, I find nothing turns on this, because the applicant has not proven the level of noise in his own unit.

22. The applicant has provided no objective evidence of the level of the heating system's noise. He says the level of noise in his bedroom reached 46 dB at times but does not say how he measured this. He did not provide any video or audio recordings, or decibel readings of the noise. He did not provide any evidence from anyone else about the noise level in his bedroom, including his daughter, who visited him before the heating system was fixed.

23. I accept that the applicant found the noises coming from the heating system to be subjectively unbearable. I also accept that it interfered with his sleep. However, that is not the test. Without any objective evidence, I find it is impossible to assess the noise with reference to a "reasonable person". So, I find the applicant has not proven the noise was objectively unreasonable. As the applicant has not proven the noise was unreasonable, I find he has not proven the respondent's heating system noise was a nuisance. I dismiss his claims.

24. However, I would not have ordered some the applicant's claims in any event. The applicant asked for an order that the respondent repair his heating system. I find this is a claim for injunctive order, which means ordering a party to do or not do something. Other than limited exceptions for personal property and specific performance, which do not apply here, the CRT does not have jurisdiction to make injunctive orders in small claims disputes. So, this remedy is outside the CRT's small claims jurisdiction and I would not have ordered it in any event.

25. 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. The applicant was unsuccessful and so I dismiss his claim for reimbursement of CRT fees. While the respondent was technically successful, I find they admitted the heat pump made noise, but did not repair it until after the applicant started this CRT proceeding. On a judgment basis, I find neither party is entitled to reimbursement of their CRT fees. Neither party makes a claim for dispute-related expenses.

ORDERS

26. I dismiss the applicant's claims and this dispute.

Amanda Binnie, Tribunal Member