Civil Resolution Tribunal

Date Issued: June 27, 2024

File: SC-2022-008377

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jouravleva v. Chao*, 2024 BCCRT 612

B E T W E E N :

RIMMA JOURAVLEVA

APPLICANT

A N D :

JIAN FUN CHAO

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about responsibility for water damage in a strata lot.

2. The applicant, Rimma Jouravleva, owns a strata lot directly below one owned by the respondent, Jian Fun Chao. The applicant says her ceiling was damaged by a leak

in the respondent's toilet. The applicant says the respondent's plumber likely damaged the toilet while repairing it, leading to the leak. The applicant claims $5,000 in damages for her insurance deductible, increased insurance premiums, and rent reimbursement she paid her tenant.

3. The respondent says they are not responsible for the water leak. They say the water damage was the result of a "pinhole leak" on a pipe below the floor, which I infer she says is the strata's responsibility. The respondent asks me to dismiss the applicant's claims.

4. Each party is self-represented.

5. For the reasons that follow, I dismiss the applicant's claim.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.

7. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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, whether or not the information would be admissible in court.

9. Where permitted by CRTA section 118, 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.

ISSUE

10. The issue in this dispute is whether the respondent must pay the applicant damages arising from the water leak.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. 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. On May 25, 2022, the applicant discovered water leaking from her ceiling. She says that around 2:10pm, she found water in her bathroom and determined it was coming from around her ceiling fan. As noted above, the applicant says the leak was caused by the respondent's plumber.

13. The respondent agrees they had a plumber attend that day at 12:00pm. They say the plumber repaired a plastic handle inside the toilet. In a statement, the plumber says they only replaced the handle. They included a photo showing the broken internal strut connecting the handle to the chain. The plumber says they did no other work, like replacing the toilet or toilet tank.

14. The plumber and the respondent both say there was no evidence of any leak in the respondent's strata lot, such as pooling water or a bad smell. The plumber also says they did not notice any other warning signs for leaks, like a rocking toilet, soft floor around the toilet, or seeping water.

15. After finding the water in her lot, the applicant contacted the strata's building manager. The building manager attempted to gain access to the respondent's lot, but the respondent's tenant apparently did not recognize him and did not allow them entry.

16. The building manager arranged for Circle Restoration, a restoration company, to attend the building and dry the applicant's ceiling using air movers. Circle's report says the water leak came from the respondent replacing their toilet. The respondent, and their plumber, explicitly say they did not replace the toilet. Circle undisputedly did not enter the respondent's lot or talk to the respondent or their tenant about the alleged toilet repairs.

17. On May 30, Circle attended for a follow-up and found a small area of the ceiling remained wet. Circle recommended that the air movers stay in place to dry the ceiling, but the building caretaker asked Circle to remove them and put their own fan in place.

18. On June 8, the applicant emailed the strata property manager to mention their tenant had seen some water coming from the cover of the ceiling fan. The applicant also told the building manager. The strata manager responded on June 13 to tell the applicant to contact their personal insurer to send a restoration company to investigate. The applicant does not say she raised the issue to the respondent directly.

19. On June 16, the applicant again contacted the building manager to report a leak. At the building manager's request, Circle again attended the building. It cut a hole in the applicant's ceiling drywall. When it did so, it discovered a "slow leak" (elsewhere referred to as a "pinhole leak") in the toilet drainpipe underneath the respondent's floor. This leak caused water to collect in the ceiling cavity above the applicant's strata lot. Circle also entered the respondent's lot and discovered the tile around the toilet base was reading "wet," but that there were no signs of standing water.

20. On June 17, the building manager arranged for a plumber, MegaHydronics, to attend. MegaHydronics' invoice says it inspected the respondent's toilet and found both that the flange was broken and that a bolt was not holding the toilet properly in place. It says this caused the toilet not to properly seat on the wax ring, leading the toilet to leak when it was flushed.

21. Together, I find the evidence shows the leak had two sources: the respondent's improperly seated toilet and the drainpipe under the floor. It is not clear from the

evidence how much of the damage was caused by each leak, but given my findings below, it does not matter.

22. The applicant ultimately paid for repairs to her bathroom through her insurance. She paid the insurance deductible and says her insurance premiums rose as a result of her claim. She also says she was required to reimburse her tenant, who lived in her strata lot, $500 a month for the leak and associated repair's nuisance.

Was the respondent responsible for their toilet?

23. Previous CRT small claims decisions have found that where one strata lot owner seeks to recover from another for the cost of water damage, they must prove liability in negligence, nuisance, or under a specific strata bylaw making an owner liable to their neighbour for the damage.[1] I agree with this approach and apply it here.

24. Neither party provided the strata's bylaws or argued they apply to this dispute, so I limit my analysis to negligence and nuisance.

25. In order to establish negligence, the applicant must prove the respondent owed her a duty of care, that the respondent breached their standard of care, and that the respondent's breach of the standard of care caused the water damage to the applicant's ceiling. The standard of care is based on what would be expected of an ordinary, reasonable, and prudent person in similar circumstances.

26. I find that the respondent owed the applicant a duty of care as a neighbouring strata lot owner. I also find that the applicant suffered damages as a result of the water leak from the respondent's toilet. The issue is whether the respondent's conduct fell below the standard of a reasonable strata lot owner.

27. A nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. Where a person does not intentionally create a nuisance, they will only be liable if they either knew or reasonably should have known about the potential nuisance and failed to do anything to prevent it. In other words,

[1] See, eg: *Ali v. Stringhetta*, 2023 BCCRT 678.

the respondent is not automatically liable just because the leak originated in their strata lot.[2]

28. As noted in previous CRT decisions, it can be surprising for an owner to learn they are responsible for repairs to their strata lot even though the damage's source originated in someone else's strata lot.[3] However, in the absence of negligence, nuisance, or a specific bylaw making an owner liable to their neighbour for the damage, an owner is responsible for the cost to repair their own strata lot even though they did nothing to cause the damage.

29. I find the applicant must prove the same thing to succeed in negligence and nuisance: that the respondent failed to take reasonable steps to avoid causing water damage to the applicant's strata lot.

30. Based on the evidence, I am not satisfied that the respondent acted unreasonably. They hired a plumber to perform a minor repair to their toilet, one that did not engage the flange or the wax seal. The plumber says in their report they have 40 years of experience plumbing and there is no evidence to suggest otherwise, so I find it was reasonable for the respondent to hire that plumber.

31. The respondent said they had no indication their toilet was leaking until May 25. While the respondent's tenant at first did not allow the building manager to enter at that time, I find that was not a result of any action taken by the respondent. Further, the evidence shows that once the respondent learned of the issue, they attended the building, met with their tenant, and reached out to the building manager to clarify.

32. The respondent says after they arrived on May 25, they invited the building manager to investigate the strata lot, but the building manager refused. The respondent asked if they or their plumber could go into the applicant's lot, but the building manager said no. Despite that, the respondent says they and their tenant went to the applicant's unit and knocked but received no answer. The respondent says the building manager

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See, eg: *Theberge v. Zittlau*, 2000 BCPC 225.
[3] See, eg: *Huang v. Yu*, 2023 BCCRT 1033

and restoration company never reached out to them again to provide a follow up or seek investigation.

33. On June 16, when the applicant reported the new leak, the respondent undisputedly allowed the restoration company to enter the strata lot. They did the same for the plumber on June 17. At every step, I find the respondent took the steps an ordinary, reasonable, and prudent person would take to mitigate and resolve the water leak.

34. I find the evidence does not establish that the respondent acted unreasonably in the circumstances. I place significant weight on the fact that the leaks were only discovered after Circle attended for the third time and cut a hole in the applicant's ceiling to confirm the slow leak. I find this is consistent with the respondent's argument that the water leak was not visible in the respondent's strata lot and that the respondent did not know the pipe was corroded or the flange was broken. So, I find the respondents are not liable in negligence or nuisance and I dismiss the applicant's claims.

35. 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. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful, I dismiss her claim for CRT fees and a dispute-related $20 registered mail expense. The respondent did not claim any fees or dispute-related expenses.

ORDER

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

Christopher C. Rivers, Tribunal Member