



Civil Resolution Tribunal

Date Issued: July 26, 2024

File: SC-2023-005181

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lenasi v. Huang*, 2024 BCCRT 723

B E T W E E N :

STEFAN LENASI

APPLICANT

A N D :

YINGWEI HUANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about water leaking from a strata lot into another strata lot below. The applicant, Stefan Lenasi, says that the respondent, Yingwei Huang, is liable for water damage caused by Dr. Huang's leaking toilet. Mr. Lenasi claims \$1,500 for reimbursement of the cost of repairs.

2. Dr. Huang denies liability. He says he did not neglect or intentionally cause damage to the toilet. He says he responded and investigated promptly when a strata manager first reported the water leakage to him. He says that Mr. Lenasi should have purchased insurance to cover such loss.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mr. Lenasi's claims.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
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. 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.

ISSUE

9. Does Dr. Huang owe Mr. Lenasi compensation for water damage, and if so, how much?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Lenasi as the applicant must prove his 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.
11. It is undisputed that Mr. Lenasi's strata lot is located directly below Dr. Huang's strata lot. On March 29, 2023, Mr. Lenasi's tenant, RS, advised Mr. Lenasi that they saw water leaking through the ceiling of a bathroom. The water is shown in photos in evidence. That same day, Mr. Lenasi contacted the strata manager, TK, by email. TK emailed on March 30, 2023, that they told Dr. Huang to temporarily stop using the toilet.
12. The strata corporation (strata) summarized its findings in an April 13, 2023 letter to Mr. Lenasi. It found that the water leak appeared to be due to the toilet wax seal failure in Dr. Huang's strata lot. A receipt shows that Dr. Huang hired a plumber to replace the wax seal on April 6, 2023. So, I agree with the strata's conclusion. The strata said it would not be making an insurance claim or conducting any repairs in any strata lots.
13. Mr. Lenasi made various attempts to contact Dr. Huang. On May 9, 2023, Dr. Huang replied to Mr. Lenasi's email and denied liability for the water damage.
14. On June 20, 2023, RS emailed Mr. Lenasi to report another leak in a second, different bathroom ceiling in Mr. Lenasi's strata lot. RS reported that he contacted TK and TK contacted Dr. Huang. A June 20, 2023 receipt shows that Dr. Huang hired a plumber to replace another toilet wax seal.

15. I note that Mr. Lenasi applied for dispute resolution on May 11, 2023, and only referred to 1 leak in the Dispute Notice. So, I find Mr. Lenasi is not claiming for the second June 2023 leak in this dispute. I make no findings about it here.
16. Mr. Lenasi eventually hired a drywaller to repair the ceiling water damage in both bathrooms. An August 19, 2023 receipt shows this cost of \$1,300. This is less than the claim amount and includes repairs for both leaks. This is because Mr. Lenasi found a contractor willing to do the repairs for less than he expected.
17. I turn to the parties' positions. Mr. Lenasi says that Dr. Huang failed to adequately maintain and make necessary repairs to his plumbing, including the toilet wax seal. He also relies on bylaw 39.2(b)(v), discussed below.
18. Dr. Huang denies being negligent. He says there was no indication that either toilet was leaking, and he acted quickly to fix the issues. He cites case law including *Theberge v. Zittlau*, 2000 BCPC 225, *Zale et al v. Hodgins*, 2019 BCCRT 466, *Shiu v. Coba*, 2024 BCCRT 68, and *Huang v. Yu*, 2023 BCCRT 1033. Dr. Huang did not directly address the bylaws.
19. I will first consider the strata's bylaws, which are in evidence. Bylaw 39.1 says that if an owner is responsible for loss or damage to a strata lot, that owner must indemnify the strata. Bylaw 39.2(b)(v) elaborates on what "responsible" means under bylaw 39.1 (emphasis mine).
20. Given their wording, I find that bylaws 39.1 and 39.2(b)(b) do not assist Mr. Lenasi. This is because they are both about liability of a strata lot owner to the strata, rather than any liability between strata lot owners in the strata.
21. As the bylaws do not assist Mr. Lenasi, I turn to the law of negligence and nuisance. To succeed in negligence, Mr. Lenasi must prove Dr. Huang owed him a duty of care, he breached the applicable standard of care, and Mr. Lenasi suffered damage caused by the breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. As co-owners in the same strata, I find Dr. Huang owes Mr. Lenasi a duty of care, and that the standard is reasonableness. See *De Angelis v. Dodd*, 2023 BCCRT 69 and *Burris v.*

Stone et al, 2019 BCCRT 886. I note that CRT decisions are not binding but I rely on them in this decision.

22. To succeed in nuisance, Mr. Lenasi must prove that Dr. Huang substantially and unreasonably interfered with the use or enjoyment of his strata lot. If Dr. Huang did not intentionally create a nuisance, he will only be liable if he either knew or reasonably should have known about the potential nuisance and failed to do anything to prevent it. See *Theberge* at paragraphs 33 to 36 and *Sadowick v. British Columbia*, 2019 BCSC 1249, at paragraphs 89 to 92.
23. I find that in order to succeed in negligence or nuisance, the test is essentially the same. Mr. Lenasi must prove that Dr. Huang unreasonably failed to prevent the leak.
24. The facts in *Huang* are similar to this one. The CRT found that a water leak occurred due to a faulty toilet wax seal in the respondent's strata lot. The CRT held that it was unproven that the respondent was liable in either negligence or nuisance. The CRT noted there was no indication that the leak was visible to the respondent or that a reasonable person in the circumstances would have known about the leak.
25. Here, there is no evidence that Dr. Huang intentionally caused the March 2023 leak. Dr. Huang's plumber only noted on the April 2023 receipt that the toilet wax seal was "aging". There is no indication that Dr. Huang would have seen the March 2023 leak from his strata lot or noticed that the toilet wax seal was failing. There is no indication that Dr. Huang reasonably should have known to act earlier.
26. I acknowledge that RS reported another leak in June 2023. However, as this was the second leak, I find it does not show that Dr. Huang should have checked his toilet wax seals prior to March 2023.
27. As stated in *Zale* at paragraph 21, it can be surprising for an owner to learn they are responsible for repairs to their strata lot even though the source of the damage originated from someone else's strata lot. 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.

28. For all those reasons, I dismiss Mr. Lenasi's claim.

29. 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. I see no reason in this case not to follow that general rule. I dismiss Mr. Lenasi's claim for reimbursement of CRT fees and registered mail costs as a dispute-related expense. Dr. Huang did not claim reimbursement.

ORDER

30. I dismiss Mr. Lenasi's claims and this dispute.

David Jiang, Tribunal Member