



# Civil Resolution Tribunal

Date Issued: October 4, 2024

File: SC-2023-005971

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dercach v. Bohgan*, 2024 BCCRT 990

BETWEEN:

MIKE DERCACH

**APPLICANT**

AND:

RAVI BOHGAN

**RESPONDENT**

– and –

Files: SC-2023-006788  
and SC-CC-2024-001496

BETWEEN:

MIKE DERCACH

**APPLICANT**

AND:

GURDEV SINGH BOHGAN and KASHMIR KAUR BOHGAN

**RESPONDENTS**

A N D :

MIKE DERCACH

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Peter Mennie

**INTRODUCTION**

1. These three disputes are about a fence allegedly on the wrong side of a property line. These disputes all involve the same issues and evidence, so I have issued a single decision for all three disputes.
2. The applicant in SC-2023-005971 and SC-2023-006788, Mike Dercach, says that the fence of a neighbouring property crossed onto his property. He removed the fence himself. He seeks damages for loss of use of his property, landscaping costs, and mental distress.
3. I infer from the parties' submissions that the neighbouring property is owned by the respondents in SC-2023-006788, Gurdev Singh Bohgan and Kashmir Kaur Bohgan. The respondent in SC-2023-005971, Ravi Bohgan, is the son of Gurdev and Kashmir Bohgan. Ravi Bohgan and his family lived in the neighbouring property. The Bohgans do not agree that the fence was on Mr. Dercach's property. Ms. Bohgan filed a counterclaim in SC-CC-2024-001496 and says Mr. Dercach damaged the fence when he removed it. She claims \$2,900 to replace the fence.
4. All parties are self-represented.

## **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.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing. None of the parties requested an oral hearing. I find that I can decide this dispute based on the documentary evidence and written submissions before me. 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.
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 a 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.
9. Both parties provided recordings to try to cast the other side in a negative light. The Bohgans provided audio of an argument between the parties which did not upload to the CRT portal. The Bohgans say they provided this audio recording to show that Mr. Dercach behaved aggressively. However, Mr. Dercach's behaviour is not relevant to the issues before me. Bearing in mind the CRT's mandate which includes proportionality and the speedy resolution of disputes, I find that the audio recording is not relevant and that it is not necessary to ask the Bohgans to resubmit this evidence.

## **ISSUES**

10. The issues in this dispute are:

- a. Did the Bohgans' fence cross onto Mr. Dercach's property and, if so, is he entitled to damages?
- b. Does Mr. Dercach have to pay \$2,900 to repair the Bohgans' fence?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Dercach must prove his claims on a balance of probabilities, meaning more likely than not. Ms. Bohgan must prove her counterclaim to the same standard. 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.

### ***Did the Bohgans' fence cross onto Mr. Dercach's property?***

12. The Bohgans and Mr. Dercach own adjoining properties. The end of their backyards is above a retaining wall. The Bohgans built a fence from the retaining wall to the end of the properties.
13. Mr. Dercach says the Bohgans' fence crossed onto his property. He says they were negligent because they did not obtain a survey to mark the boundary between the properties before building the fence. He says he told the Bohgans who said they would get a survey done but then decided not to. Mr. Bohgan removed the fence himself after 3.5 months of waiting.
14. The Bohgans submissions are largely the same. They say they lined their fence up with Mr. Dercach's fence below the retaining wall and built their fence to the survey post at the end of the property. They say Mr. Dercach only complained about the fence three years after it was built. They say they took steps to get a survey and tried to get Mr. Dercach to pay for half the cost, however Mr. Dercach removed the fence before the survey started.
15. Mr. Dercach argues that the Bohgans eventually rebuilt their fence further back from his property which is proof that the original fence was on his side of the property

line. The Bohgans say they rebuilt their fence further back to appease Mr. Dercach. On balance, I prefer the Bohgans' evidence. Mr. Dercach removed the fence without warning and later removed a temporary fence set up by the Bohgans. I find it likely that Mr. Dercach would have removed any fence rebuilt in the same place. The evidence and submissions provided by all parties shows that the neighbours' relationship had broken down. Conflict between the parties was so bad that Ravi Bohgan and his family moved to a different house shortly after Mr. Dercach removed the fence. I accept that the Bohgans were trying to de-escalate the situation, so they rebuilt the second fence further back from the property line. So, I find that the location of the second fence does not prove that the original fence was across the property line.

16. Mr. Dercach provided the survey plan of his property and a photo and video showing a string marking the property line. However, the photo and video do not show where Mr. Dercach chose the start and end points to draw the string. I am left without any evidence to mark the property line and neither party provided a professional survey. As noted above, Mr. Dercach must prove his claim on a balance of probabilities. Without any supporting evidence, I find that he has not proven that the fence was on his property. It follows that I dismiss Mr. Dercach's claims related to loss of use to his property and landscaping costs.
17. Mr. Dercach also claims \$2,500 for mental distress damages. He says he was subject to threats, harassment, intimidation tactics, and trespassing on his property. He did not ask for this in his Dispute Notice but later made this claim as a dispute-related expense in SC-2023-005971. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, to be successful in a claim for mental distress there must be some evidence supporting the claim. I agree with the reasoning in *Eggberry* and apply it here. Mr. Dercach provided no evidence to show that he suffered mental distress. So, I dismiss this claim.

### ***Should Mr. Dercach pay for the Bohgans' fence?***

18. Mr. Dercach says he was legally allowed to remove the fence because it was on his property. I found above that it was unclear whether the fence crossed the property line. In any event, Mr. Dercach is not correct. Even if the fence was on Mr. Dercach's property, courts have held that a "self-help remedy" such as removing a fence is not available without prior warning, urgency or a risk of harm, and the self-help remedy must be proportionate (see *Vigh v. Coles*, 2022 BCSC 767).
19. I find that Mr. Dercach had no legal right to remove the Bohgans' fence. Mr. Dercach did not warn the Bohgans before he removed the fence. The fence had been there for three years so there was no urgency or risk of harm. The disputed square footage was small and above the retaining wall, so I find the fence's placement caused Mr. Dercach very little hardship. Applying the analysis set out in *Vigh* above, I conclude that a self-help remedy was not available to Mr. Dercach in these circumstances.
20. Mr. Dercach admits that some pieces of the fence were damaged when he removed it. I find that Mr. Dercach committed the tort of conversion, meaning he wrongfully destroyed the Bohgans' fence. So, I find that Mr. Dercach must pay Ms. Bohgan damages for the cost of the replacement fence.
21. Ms. Bohgan's counterclaim asks for \$2,900 in damages to repair the fence. She provided two receipts for \$404.55 and \$101.78 for fence materials. The photos in evidence show that Mr. Dercach broke or bent some of the fence pieces, so I accept that she needed to buy these materials. Ms. Bohgan provided a text message from Gurdev Bohgan which suggests he paid \$1,500 for fence materials and \$1,600 for labour, however she did not provide any receipts for these payments. I find that Ms. Bohgan has only proven damages for the two receipts she provided for a total of \$506.33. So, I order Mr. Dercach to pay Ms. Bohgan \$506.33 as damages for the destruction of her fence.

## **FEES, EXPENSES, AND INTEREST**

22. The *Court Order Interest Act* applies to the CRT. Ms. Bohgan is entitled to pre-judgment interest on the \$404.55 from September 27, 2023, the date she paid this expense, to the date of this decision. This equals \$21.02. She is entitled to pre-judgment interest on the \$101.78 from October 16, 2023, the date she paid this expense, to the date of this decision. This equals \$5.03. Her total pre-judgment interest is \$26.05.
23. 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. Ms. Bohgan was successful, so I order Mr. Dercach to reimburse her for the \$75 CRT fee she paid to file her counterclaim. Mr. Dercach was not successful, so I do not order any reimbursement of his CRT fees. None of the parties claimed any dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this decision, I order Mr. Dercach to pay Ms. Bohgan a total of \$607.38, broken down as follows:
- a. \$506.33 as damages,
  - b. \$26.05 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$75 in CRT fees.
25. Ms. Bohgan is entitled to post-judgment interest, as applicable.
26. I dismiss Mr. Dercach's claims.

27. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Peter Mennie, Tribunal Member