



Civil Resolution Tribunal

Original Decision Issued: November 8, 2024

Amended Decision Issued: November 28, 2024

File: SC-2023-007353

Type: Small Claims

Civil Resolution Tribunal

Indexed as: Nietvelt¹ v. *NLL Management (2013) Ltd.*, 2024 BCCRT 1142

BETWEEN:

JANET NIETVELT and PAUL NIETVELT

APPLICANTS

AND:

NLL MANAGEMENT (2013) LTD.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

¹ I have amended this decision under *Civil Resolution Tribunal Act* section 64(a) to correct a typographical error in the spelling of the applicants' names.

INTRODUCTION

1. The applicants, Janet Nietvelt and Paul Nietvelt, say their car was damaged while entering the underground garage of the respondent, NLL Management (2013) Ltd. (NLL). The Nietvelts say they entered the garage while the overhead door was open, and the garage door came down unexpectedly and hit their car's roof. They say the NLL was liable. They request an order that NLL pay them \$2,929.51 for car repairs.
2. NLL says it is not at fault, and that the garage door was operating correctly. NLL says the Nietvelts failed to press the green entry button before entering the garage. NLL also says this is a matter between the Nietvelts and their insurer, the Insurance Corporation of British Columbia (ICBC).
3. The Nietvelts are self-represented in this dispute. NLL is represented by an employee.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
5. 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. 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.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUE

7. Does NLL owe the Nietvelts \$2,929.51 for car damage?

EVIDENCE AND ANALYSIS

8. As applicant in this civil dispute, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.
9. NLL runs a lodge, which includes a fitness centre. The Nietvelts regularly went to the lodge to use the fitness centre. The Nietvelts say that in 7 years of weekly visits, the garage door is normally open during warm weather and closed in cold weather. They say that when the door is closed, they press the green button on a post 20 feet from the entrance, and drive through when the door opens. When the door is already open, they simply drive through. They say there had been no problem with the door before.
10. The Nietvelts say that on May 19, 2023, they drove through the open door and it came down unexpectedly and struck their car.
11. The Nietvelts note that there is no sign stating that one must press the green button before driving through the open door. The only sign, located on the post with the green button, says "property under 24 hr. video surveillance. please contact the front desk for more information."
12. NLL does not dispute these facts.
13. In their dispute application, the Nietvelts said the door was not operating properly. They speculated that the electronic sensor eyes were misaligned. However, in their final reply submission, the Nietvelts acknowledge that NLL "fulfilled its obligations to repair and maintain their garage door." The Nietvelts did not pursue their argument that the door or its sensors were faulty, and I find this is not proved.

14. However, the Nietvelts say NLL is liable for the car damage because NLL was failed to provide proper signage instructing patrons to press the green button before driving through the open door. They NLL was “negligent in its omission to properly advise public users about the operation of their underground door.”
15. To prove negligence, the Nietvelts must show that NLL owed them a duty of care, NLL failed to meet the applicable standard of care, and that failure caused the Nietvelts’ reasonably foreseeable damages: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
16. As a business offering parking to the public, I find NLL owed the Nietvelts a duty of care. Also, I find NLL was an occupier of a premises under the *Occupiers Liability Act* (OLA). OLA section 3(1) generally says an occupier of a premises owes a duty of care to ensure a person's personal property, such as a vehicle, will be reasonably safe while on the premises.
17. The standard of care under the OLA and for negligence is the same. It is to protect others from an objectively unreasonable risk of harm: *Agar v. Weber*, 2014 BCCA 297 at para 30. This means the Nietvelts must prove the lack of garage door signage posed an objectively unreasonable risk of harm.
18. As noted above, the Nietvelts argue that they had driven through the open door many times over the previous 7 years with no problems. They say that based on this fact, and the lack of signage, it was impossible for them to know that the door might come down as they drove through. I find this argument persuasive.
19. NLL argues that there were no previous incidents where the door hit a patron’s vehicle. They also say that video footage shows that in the 2-hour period before the door hit the Nietvelts’ car, all other patrons used the green button to access the garage. Essentially, NLL argues that Mr. Nietvelt, who was driving, did not use reasonable care and attention by entering the garage without stopping and pressing the button.

20. NLL provided photos showing that 4 other drivers who arrived shortly before the Nietvelts pressed the green button before driving into the garage. However, as noted by the Nietvelts, the angle of these photos does not show whether or not the door was open when these vehicles arrived at the garage entrance.
21. NLL also argues that Mr. Nietvelt drove faster than these other drivers. However, since NLL provided only still photos and no videos, I find this assertion unproved. In any event, I find there is no evidence before me showing that the door would not have hit the Nietvelts' car if it had moved more slowly.
22. The Nietvelts provided video evidence filmed in September 2023 showing 6 vehicles entering the garage through the open door without pressing the green button. I find this evidence undermines NLL's argument that Mr. Nietvelt did not use reasonable care and attention in the circumstances. Given that there is no stop sign, and no sign indicating that one must press the green button before entering the garage, I find it was reasonable for Mr. Nietvelt to drive through the open door.
23. NLL relies on a previous CRT decision, *Joshi v. The Owners, Strata Plan NW 1833*, 2019 BCCRT 39. In that case, the strata's garage door hit a strata lot owner's car as he drove through. The tribunal member found the strata was not liable for the owner's car repair costs. However, I find that case was different, because the issue was whether the strata had met its duty under the *Strata Property Act* (SPA) to repair and maintain the garage door. In this case, the SPA does not apply, and the parties agree that the door was reasonably maintained. So, I find the reasoning in *Joshi* is not relevant.
24. I find that *Landels v. ICBC*, 2021 BCCRT 246 is more relevant to this dispute. In *Landels*, an automatic road gate began to close and hit a driver's horse trailer as she drove through. The applicant gate owner filed a claim against ICBC and the driver, seeking gate repair costs. The tribunal member dismissed the gate owner's claim, noting that there were no signs advising visitors how the gate operated or warning that it could shut unexpectedly in certain circumstances. Partly for this

reason, the tribunal member found the driver was not negligent. While prior CRT decisions are not binding on me, I find this reasoning persuasive and rely on it.

25. In summary, I find that by not posting any signs, NLL was negligent, and failed to meet its duty under OLA section 3(1) to protect drivers from an objectively unreasonable risk of harm. Specifically, I find it was reasonably foreseeable that the gate would eventually hit a car, given the lack of warning or instructions.
26. NLL also says the Nietvelts should have claimed compensation for vehicle damage through ICBC. The Nietvelts say this would have increased their future insurance premiums. I find the Nietvelts were not legally obligated to make an insurance claim, and in any event, there is no proof the claim would have been approved. So, I find this is not a sufficient defense.
27. For these reasons, I allow the Nietvelts' claim. They provided an invoice and payment confirmation from an auto body shop for the claimed amount of \$2,929.51. So, I order NLL to pay this amount.
28. The *Court Order Interest Act* (COIA) applies to the CRT. I find the Nietvelts are entitled to pre-judgment interest from the payment date of June 26, 2023. This equals \$202.89.
29. As the Nietvelts were successful in this dispute, under CRTA section 49 and the CRT's rules I find they are entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

30. I order that within 30 days of this decision, NLL must pay the Nietvelts a total of \$3,257.40, broken down as follows:
 - a. \$2,929.51 in damages,
 - b. \$202.89 in pre-judgment interest under the COIA, and

c. \$125 in CRT fees.

31. The Nietvelts are entitled to post-judgment interest under the COIA, as applicable.

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

Kate Campbell, Vice Chair