Civil Resolution Tribunal

Date Issued: January 16, 2025

File: SC-2023-006170

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Holt v. Ormston*, 2025 BCCRT 68

B E T W E E N :

DIANNE HOLT

APPLICANT

A N D :

GREGORY ORMSTON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute arises from cat droppings. The applicant, Dianne Holt, says the respondent, Gregory Ormston, placed the droppings at her feet and kicked them into her yard. She also says they ripped off and stole a charge-port cover from her electric car during the same incident. The applicant claims $5,000 as compensation for a

combination of vehicle damage, time spent on yard cleanup, stress and anxiety arising from the incident, and other items discussed below.

2. The respondent denies liability. They say the applicant's cat left the droppings on their property. They say they merely returned the droppings to their owner. They admit to kicking the droppings out of frustration. They also admit to taking the charge-port cover, though they say they initially intended to return it. They say they did not because of their lawyer's advice. They also say that the applicant claims an unreasonable amount for damages.

3. The parties represent themselves.

4. For the reasons that follow, I find the applicant has proven part of her claim.

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.

6. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. To some degree, the parties in this dispute each question the other's credibility (truthfulness) about what occurred. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, the parties provided their recollections of what happened, and the key facts are largely undisputed. No party requested an oral hearing, and I find it unlikely that cross-examination would reveal any inconsistencies in any party's evidence.

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.

ISSUES

9. The issues in this dispute are as follows:

    a. Is the respondent liable for the alleged car damage?

    b. Is the respondent liable for the droppings left on the applicant's property?

    c. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

10. 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. The respondent provided no evidence though they had the opportunity to do so.

11. The background facts are outlined in the parties' submissions. They are undisputed except for where I have noted otherwise.

12. The parties each occupied different sides of a duplex. Starting around March 15, 2023, the respondent began removing animal droppings from their side of the duplex's front garden and placing them on Ms. Holt's side of the front yard.

13. The applicant owns a cat. At the time of this dispute, she allowed it outside at least a few times a week. The respondent explains that the droppings originated from the applicant's cat. They say they saw the cat use their front garden as a litter box on at

least 1 occasion. The applicant does not conclusively deny that her cat left at least some droppings in the respondent's yard. However, she suggests that the respondent used at least some droppings from their own dogs and cats.

14. I find it unlikely that the respondent would undertake the unpleasant task of placing animal droppings in the applicant's yard without a sincerely held belief about the droppings' origins. Given that the applicant let her cat out, the proximity of the parties, and the respondent's submission of seeing the cat during the act, I find it likely that at least some of the droppings originated from the applicant's cat.

15. The parties disagree on the quantity of droppings. The applicant says that the respondent left 30 or more pieces every few days for 2 weeks. The respondent says the applicant exaggerates and that it was only 2 occasions and less than 5 pieces. There are no photos of the droppings, and the applicant bears the burden to prove her claim, so I find the lower number is more likely as it is admitted.

16. The applicant subsequently put some of the droppings on the respondent's front mat. On the evening of April 2, 2023, the respondent and their spouse came home and discovered the droppings. They gathered the droppings and knocked on the applicant's door. She came outside. The respondent dropped the droppings at her feet. Unsurprisingly, the parties had an unpleasant verbal confrontation. The respondent also kicked some or all of the droppings into the applicant's yard. The respondent says the applicant pushed him, but as there is no claim about this, I find nothing turns on it.

17. The applicant told the respondent to leave. As they did so, they passed the applicant's car. They took the car's charge-port cover, and also damaged the area around the cover. The respondent denies damaging the car, but as discussed below, the evidence refutes this.

18. The applicant called the police. They arrested and charged the respondent with theft and mischief. Ultimately the Crown stayed or withdrew the charges. The parties are no longer neighbours.

Issue #1. Is the respondent liable for the alleged car damage?

19. I will first discuss the car damage. The law of negligence applies. While I considered trespass, the respondent damaged personal property, rather than land, and they were leaving the applicant's property at the time.

20. To prove negligence, the applicant must show that 1) the respondent owed her a duty of care, 2) the respondent breached the standard of care, 3) the applicant sustained loss, and 4) the loss was caused by the respondent's breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC.

21. I find that the respondent owed the applicant a duty of care as they were neighbours in a duplex and their actions would naturally affect each other. I find the standard of care was reasonableness.

22. The respondent says the charge-port cover of the applicant's car caught the pocket of his jeans as he walked by, and this caused the cover to rip off. Even if this is true, I find this still breached the standard of care. I find the respondent, acting reasonably, should have walked around the car with sufficient clearance to avoid snagging the cover. The respondent says there was a lack of space, and the cover was already ajar. Again, even if this were true, I find they should have found an alternative route or asked the applicant to close the cover before proceeding. A reasonable person watches where they are going, particularly if they are entering someone's private property uninvited.

23. I do not find expert evidence necessary to reach this conclusion. In any event, the respondent provided such evidence in an October 5, 2023 email from Jeff Mayal. I find it is expert evidence under CRT rule 8.3 as Jeff Mayall identified themselves as an autobody estimator. They said that "the forceful removal of the cover resulted in damage to [the] internal mechanism and the quarter panel…It is improbable that the internal mechanism was damaged by a mere passerby. In our experience with similar parts, such damage typically occurs when the part is forced into an unnatural

position." This evidence shows that, at a minimum, the respondent was negligent and may have acted recklessly or willfully to damage the car, by using force.

24. I am satisfied that the applicant sustained a loss caused by the respondent's breach. The above-mentioned email and a July 25, 2023 autobody invoice show the extent of the repairs. I find they were all in connection with the cover as the invoice does not say otherwise.

25. The respondent also admits they never returned the electric cover on the advice of their lawyer. Regardless of the reason, the applicant required the repairs and a new cover to be made whole. As the invoice is for $3,117.25, I award this amount and order the respondent to pay it.

26. The respondent points out that the applicant will only pay $300 as an insurance deductible. The deductible is shown in the July 2023 invoice. However, the law says that the applicant's insurance coverage has no impact on the respondent's liability or the damages it is required to pay. The reason for this rule is that the benefits of insurance should flow to the person who bought the insurance, not the person who caused damage. See, for example, the non-binding decision of *Larix Landscape Ltd. v. James*, 2024 BCCRT 744 at paragraph 18, citing *Cunningham v. Wheeler*, 1994 CanLII 120 (SCC) and *Kaur v Tse*, 2020 BCSC 1072.

27. The applicant also says the respondent left an additional scratch at the back of her car. The applicant's submissions indicate this is separate from the cosmetic work already outlined in the July 25, 2023 invoice. She says this will cost at least $2,000 to fix. However, there is no evidence about this additional scratch, so I find the scratch, its cause, and the cost to repair it are all unproven.

Issue #2. Is the respondent liable for the droppings left on the applicant's property?

28. I next turn to the issue of the droppings. I find the law of trespass applies. Trespass to land occurs when someone enters another person's land without lawful justification or places a material object on the land without a legal right to do so. They must do so

intentionally. This does not mean that they intended to commit a wrongful act, but that their actions were voluntary. Mistake is not a defence to trespass. See *Lahti v. Chateauvert*, 2019 BCSC 1081 at paragraph 6.

29. Here, the respondent admits to placing material objects (cat droppings) in the applicant's front yard twice, once more on the applicant's mat, and kicking them in the latter instance. I find that the respondent did so intentionally and without a legal right to do so. So, I find the elements of trespass are proven.

30. The respondent essentially says that the applicant bears blame for what happened. I find they claim a setoff, and I agree with the respondent to some extent. The undisputed submissions show that the applicant likewise trespassed on the respondent's property by leaving the droppings on the respondent's front mat.

31. Further, I find the law of nuisance is relevant. A nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's property. The test of whether a potential nuisance is unreasonable is objective and is measured with reference to a reasonable person occupying the premises. See *Sauve v. McKeage et al.*, 2006 BCSC 781. 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. I find the applicant created a nuisance by allowing her cat to roam at night and leave droppings on the respondent's property.

32. The applicant says she requires compensation for time and money spent on yardwork, travel expenses, and gas. She also says she had to live in fear for a period of time and suffers from PTSD.

33. Neither party provided documentary evidence about damage arising from either trespass or nuisance in connection with the droppings. On this issue, I find it unproven that the applicant or the respondent was more blameworthy or sustained greater loss or damage than the other in the circumstances. I conclude that the parties suffered equally from the cat droppings, and so I make no orders about nuisance or trespass.

34. The applicant also says that the respondent cut her Internet cables. She provided a picture that shows what appears to be clean cuts in 2 coaxial cables. This claim was not in the Dispute Notice, so I do not find it properly before me. If I am wrong, I would have found it unproven that the respondent caused the damage.

35. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on damages of $3,117.25, from July 25, 2023, the date of the invoice, to the date of this decision. This equals $230.97.

36. 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. The applicant largely succeeded. So, I find the applicant is entitled to reimbursement of $175 in CRT fees. The parties did not claim any specific dispute-related expenses. So, I order none.

ORDERS

37. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $3,523.22, broken down as follows:

    a. $3,117.25 in damages,

    b. $230.97 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in CRT fees.

38. The applicant is entitled to post-judgment interest, as applicable.

39. 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.

David Jiang, Tribunal Member