



Civil Resolution Tribunal

Date Issued: April 14, 2025

File: SC-2024-001487

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leseur v. Powell*, 2025 BCCRT 469

B E T W E E N :

JOAN LESEUR

APPLICANT

A N D :

RALPH POWELL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers, Vice Chair

INTRODUCTION

1. This dispute is about a damaged copper sink. While she was away, the applicant, Joan Leseur, allowed her former caretaker, the respondent, Ralph Powell, to tour family members around her home. When the applicant returned home, she found a

hot water tap running in her bathroom which had caused permanent damage to the copper sink. She claims \$3,424.32 for the cost of replacing the sink.

2. The respondent initially agreed to pay for any costs to repair or replace the sink, but later changed their mind, saying no one from their group was responsible for the damage.
3. Each party is self-represented.
4. For the reasons that follow, I mostly allow the applicant's claim.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal 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. These are the CRT's formal written reasons.
6. 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.
7. 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.
8. 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.

ISSUES

9. The issues in this dispute are whether the respondent negligently damaged the applicant's sink, and if so, what damages they must pay.

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. Despite having the opportunity to do so, the respondent did not provide any evidence beyond their own submissions.
11. In September 2023, the respondent hosted out-of-town family members. As part of their visit, the respondent asked the applicant permission to tour the applicant's house. The respondent was the caretaker, and the respondent's son had helped build the house. For context, in submissions, the respondent refers to the house as "award-winning" and "very high-end." The applicant agreed, and on September 25, the respondent toured his family.
12. On September 29, 2023, the applicant returned home and discovered the hot water running in the powder room, just off of the pool table room. The hot water had discoloured and stained the copper sink.
13. The applicant says 3 people had access to the house while she was away:
 - a. TP, who she hired to perform checks on the house while she was away in satisfaction of home insurance obligations,
 - b. K, her housekeeper, and
 - c. The respondent and his family.
14. An invoice from K shows they last cleaned the house on September 18. A signed checklist from TP, completed September 21, says they checked all bathrooms,

including flushing toilets and looking for drips or water leaks. After returning home, the applicant also texted TP to ask if there was anything “odd” about the powder room, to which TP replied it was fine when they checked it. TP prepared a signed statement for this proceeding saying the same thing.

15. Neither K nor TP visited the house again before the applicant’s return.
16. On September 29, the applicant texted the respondent to say someone had left hot water running resulting in the sink’s stain. She followed up a few hours later to confirm she had spoken to K and TP and had determined it was the respondent or one of their guests who had left the sink running.
17. The applicant says she tried to clean the sink and remove the discolouration, but she was unsuccessful.
18. In mid-November, the respondent sent the applicant an invoice for services they provided from August to October. The applicant suggested she could withhold payment to allow the parties to address the sink issue. The respondent replied they would cover any costs to replace or repair the sink but had hoped someone could clean the sink. The applicant paid the respondent’s invoice.
19. Receipts show that in January 2024, the applicant paid \$3,399.27 to buy the same sink and have it installed. When she asked the respondent to pay the first invoice, the respondent refused saying they did not believe they, or their guests, had damaged the sink. The respondent repeated their position in their submissions, saying neither they nor their guests had used the powder room, and that their guests were likely not even “aware” of it.

Negligence

20. As stated in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, the test for negligence requires the applicant to prove 4 things: 1) the respondent owed her a duty of care, 2) the respondent breached the standard of care, 3) the applicant suffered a loss, and 4) the loss was caused by the respondent’s breach.

21. The parties' dispute is about the 2nd part of that test. Was it the respondent, or one of their guests, who damaged the sink?
22. The evidence here is circumstantial. I do not have any concrete evidence about who left the hot water running.
23. However, I am able to make findings of fact by drawing inferences. In doing so, I must make inferences based on evidence, not speculation or conjecture, that reasonably flow from established facts.¹ To make a finding of fact, I must be satisfied it is more likely than not to be correct. In doing so, I can depend upon circumstantial evidence.
24. I find it more likely than not the respondent or one of their guests left the hot water running. In making my decision, I rely upon TP's evidence, which includes the signed and dated checklist, text messages with the applicant, and their signed statement. I find the timing and nature of TP's inspection makes it more likely than not the respondent, or one of their guests, were responsible for the hot water.
25. For their part, the respondent did not provide similar statements from their guests. I have only the respondent's blanket statement that they do not believe their guests were responsible. Further, the respondent admits to having toured the pool table room, which is adjacent to the powder room. I find this significantly weakens their statement that the guests were unlikely to be "aware" of the room and increases the likelihood one of the guests used it.
26. I also place weight on the respondent's November text message agreeing to pay for the sink. By doing so, I find they acknowledged one of their guests was likely responsible for the damage. The fact this exchange occurred 2 months after the damage means the respondent would have had lots of opportunity to canvass the question with their guests.

¹ *India v. Badesha*, 2014 BCSC 807, at paragraphs 292 to 295.

27. So, I find the respondent breached their obligation to ensure neither they, nor their guests, damaged the applicant's house while touring it. I find the applicant suffered a loss as a result of the respondent's negligence, and the respondent must pay damages.
28. The applicant provided invoices totaling \$3,399.27 for the sink's replacement (\$2,916.27) and installation (\$483). While the sink was expensive, given the house's acknowledged high-end nature, I find its cost was reasonable. I allow the applicant's claim for \$3,399.27. The applicant does not explain the \$25.05 difference between her receipts and the amount she claimed, so I find it unproven. I only award the \$3,399.27, which is supported by the receipts.
29. The *Court Order Interest Act* applies to the CRT, but in the Dispute Notice, the applicant expressly waived her right to interest. So, I make no order for pre-judgment interest.
30. 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. The applicant is entitled to reimbursement of \$175 in CRT fees. She did not claim any dispute-related expenses.

ORDER

31. Within 14 days of the date of this decision, I order the respondent to pay the applicant a total of \$3,574.27, broken down as follows:
- a. \$3,399.27 in damages, and
 - b. \$175 in CRT fees.
32. The applicant is entitled to post-judgment interest, as applicable.

33. 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 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.

Christopher C. Rivers, Vice Chair