



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lefler v. Burkette*, 2025 BCCRT 842

B E T W E E N :

KRISTA LEFLER and BRENT LEFLER

APPLICANTS

A N D :

PATRICIA BURKETTE and COREY STOUT

RESPONDENTS

A N D :

KRISTA LEFLER and BRENT LEFLER

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. The applicants and respondents by counterclaim, Krista and Brent Lefler, and the respondents, Patricia Burkette and Corey Stout, are neighbours. The applicants say that the respondents' fence crosses onto their property and is damaging their yard. They claim \$1,000 in damages.
2. The respondents deny that their fence crosses the property line or damages the applicants' yard. Their counterclaim alleges that the applicants damaged their fence and plants, violated their privacy, dumped garbage on their property, and cut off their access to cedar wood. They claim \$2,580 in damages.
3. All the parties are self-represented. The claim and counterclaim involve the same parties and similar issues, so I have written one decision for both disputes.
4. For the reasons below, I allow the applicants' claim, refuse to resolve the respondents' claim about breach of privacy, and dismiss the respondents' remaining 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.
6. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format. None of the parties requested an oral hearing. While the parties made allegations about credibility, many contested points are not relevant to the issues in this dispute. All parties provided photos and videos to support their respective claims and I find that I can make the required findings of fact on this evidence. Given that the amounts claimed are relatively low, and bearing in mind the CRT's mandate that

includes flexible and speedy dispute resolution, I have decided this claim based on the documentary evidence and written submissions before me.

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.
9. The respondents say their counterclaim is filed as a “limited response” and does not prevent them from taking further action at the BC Supreme Court. This is not correct. The respondents chose to file a counterclaim at the CRT and, in doing so, agreed to the CRT having jurisdiction over this dispute. I have decided the respondents’ counterclaim below based on the evidence they provided. Except for the breach of privacy claim which I refuse to resolve, the respondents cannot make these same claims again in another forum.
10. Corey Stout alleged in his submission that the applicants were allowed to provide evidence two weeks after the deadline set by the CRT and the respondents were not given the same opportunity. This is a misleading statement. The applicants provided all of their evidence before the deadline, however, some of it was in a format which could not be opened by the respondents or the CRT. CRT staff allowed the applicants to resubmit this evidence in a different format so it could be opened. The respondents had an opportunity to review and reply to this evidence, so I find there was no prejudice to the respondents or breach of procedural fairness. I have considered this evidence in my decision below.

ISSUES

11. The issues in this dispute are:

- a. Did the respondents' fence damage the applicants' yard and, if so, are they entitled to damages?
- b. Did the applicants damage the respondents' fence and plants, violate their privacy, trespass on their property, dump garbage on their property, or cut off their access to cedar wood and, if so, are they entitled to damages?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. The respondents must prove their counterclaim to the same standard.
13. The parties have a poor relationship with a long history. Their submissions refer to many irrelevant matters. The respondents in particular make statements and allegations about issues that are not related to this dispute. I make no findings about any of these issues. In my decision below, I refer only to the evidence and argument that I find relevant to decide the issues raised in the claim and counterclaim.

Did the respondents' fence damage the applicants' yard and, if so, are they entitled to damages?

14. In 2021, the respondents built a fence around their property made primarily of tarps. The applicants say the tarps are disintegrating and shedding pieces which end up in their yard and contaminate their soil. They say the tarps' deterioration has been an issue since 2021 and the respondents have refused to fix this problem.
15. The respondents deny that the tarps are deteriorating. They say the applicants damaged the fence by slashing it, using a high-pressure hose, and by using a fire pit near the fence. They also say the applicants never raised this issue with them and they were unaware of any damage on the applicants' side of the fence. The respondents do admit that a blizzard in 2022 did extensive damage to the fence, however, they say they repaired the damage.

16. Except for one slashed tarp, which I discuss below in the respondents' counterclaim, I do not accept that the applicants damaged the respondents' fence. The majority of the holes in the fence are not slash marks. Rather, the photos in evidence show that the tarps are disintegrating in multiple places and gradually coming apart. I find it obvious that an ordinary garden hose and a small fire cannot damage a tarp in the way alleged by the respondents. The applicants provided videos showing the tarps flapping in the wind, so I find that the tarps' disintegration is caused by the fence's poor construction and exposure to the elements.
17. I find that the respondents' tarps have been disintegrating and shedding pieces in the applicants' yard since 2021. The applicants provided photos from 2021 to present showing pieces of the tarp in their garden with the same black and white pattern as the disintegrating tarps. However, I find it unproven that the tarp pieces contaminated the applicants' soil because there is no evidence, expert or otherwise, to prove this.
18. I also find that the respondents were aware that their fence was shedding tarp pieces into the applicants' yard. The photos provided by the applicants show that the tarp's disintegration was significant. Even the photos provided by the respondents show some disintegration on their side of the fence. So, I find that the tarps' deterioration would have been obvious to the respondents. The respondents also say in their counterclaim submissions that the applicants asked them to remove their fence, so I find it likely that the deteriorating fence was a point of contention between the parties and the respondents were aware of this issue.
19. Though they did not use this term, I find that the applicants are claiming damages under the law of nuisance. A nuisance occurs when there is a substantial, non-trivial, unreasonable interference with a person's use and enjoyment of their property.¹ The test for nuisance is objective and depends on several factors, such as the nature, severity, duration, and frequency of the interference.
20. Here, I find that the respondents' fence deteriorating and leaving tarp pieces in the applicants' yard was a nuisance. The applicants' photos show that the tarps were

deteriorating in multiple places, so I accept that a considerable number of tarp pieces ended up in the applicants' yard. While a few tarp pieces alone would have been trivial, I find that the continued deterioration of the fence from 2021 to present makes this an unreasonable and substantial interference of the applicants' use and enjoyment of their property.

21. So, what are the applicants' damages? The BC Provincial Court's decision in *Pellegrin v. Wheeldon*² provides guidance. In that case, Mr. Pellegrin intentionally deposited yard debris and snow onto the Wheeldons' property over several years. Mr. Pellegrin also made insulting comments and gestures towards the Wheeldons. The court awarded the Wheeldons \$1,000 each.
22. The facts are less serious in this case than in *Pellegrin* because the respondents allowed their fence to deteriorate but did not actively cause the nuisance. While I recognize that the applicants are unhappy with the respondents' submissions in this dispute, there is no evidence that the respondents insulted the applicants while they were using their property. Given the less serious nature of the nuisance, I find that damages of \$500 to each of the applicants, for a total of \$1,000, is appropriate. So, I order the respondents to pay the applicants \$1,000.

Did the applicants damage the respondents' fence and plants, violate their privacy, trespass on their property, dump garbage on their property, or cut off their access to cedar wood and, if so, are they entitled to damages?

23. The respondents' counterclaim alleges that the applicants:
 - a. damaged their fence by cutting holes in it, kicked metal parts of the fence causing folds and bends, pushed on poles to loosen them, and fatigued the tarps with water and fire,
 - b. trespassed on their property,
 - c. dumped garbage on their property,
 - d. damaged their plants,

- e. violated their privacy with the use of surveillance cameras, and
 - f. lied about where they were building their fence which deprived them of two thousand board feet of cedar wood.
24. The respondents claim \$900 for their labour to repair and reinforce their fence, \$200 for damaged plants, \$80 for garbage removal, and \$500 for the loss of cedar wood. I deal with each of the respondents' claims below.
25. I start with the alleged damage to the fence. I found above that the tarps' deterioration was caused by exposure to the elements rather than the applicants' actions. The respondents provided no evidence to show that the metal parts on their fence were folded or bent or that its poles were loose. There is also no evidence to show that the applicants damaged the fence in this way. So, I find this part of the respondents' claims is unproven.
26. The applicants do admit they slashed one tarp, but say this was necessary because, on two occasions, the respondents shoved a "stove insert" through their fence which stretched the applicants' wire fence. The respondents do not explain why they pushed a stove insert against the applicants' wire fence, though their submissions suggest it was some sort of art installation. The respondents do not deny that the applicants initially tried to push back the stove insert before cutting the tarp on the second occasion.
27. The applicants' decision to cut open the fence was a "self-help remedy" which is not permitted unless there is prior warning, urgency or a risk of harm, and the remedy is proportionate.³ Here, I find that the applicants initially pushing the stove back was a warning to the respondents that the stove insert was stretching the wire fence. I also find that there was a risk of stretching and damaging the wire fence because, even after being pushed back, the stove insert appears quite close to the wire fence. I also consider the applicants' response to be proportionate. I say this because the applicants' uncontradicted evidence is that the respondents obtained these tarps from their local lumber yard free of charge because they were used and damaged.

That is, the respondents could replace this tarp at no cost. So, I find the applicants' decision to slash the tarp was appropriate and dismiss this claim.

28. I turn to the alleged trespass. The respondents provided photos of Brent Lefler on a ladder leaning over top of the applicants' wire fence. They also provided photos and a video of the wire fence leaning slightly towards the respondents' property while the applicants built it. The wire fence does not appear to touch the ground in these photos or video.
29. The applicants agree that Brent Lefler trespassed minimally while constructing the fence. However, they also provided photos which show the respondents' tarps leaning past a property marker. I find that both the applicants and respondents committed a "technical trespass" which caused no property damage and would only attract nominal damages. Given that the parties' respective trespasses were so minimal, I find it appropriate to dismiss these claims rather than order an exchange of nominal damages.
30. Next, the garbage on the respondents' property. The respondents say that the applicants dumped garbage in their yard. They provided photos showing garbage, however, from the dates of the photos it appears some of this garbage was left by the previous owner of the applicants' property. From the description of the respondents' photos, I infer they allege that the applicants threw a blue tarp over the fence onto their property.
31. I find this claim unproven. The respondents' photo of the blue tarp does not show where it is located so I cannot determine whether the applicants likely threw it over the fence. So, I dismiss this claim.
32. I move to the alleged damage to the respondents' plants. The respondents say that the applicants damaged their plants while building their fence. However, their photos and video do not show the applicants trampling any plants on the respondents' property. The respondents also say that ash from the applicants' fire pit is affecting their plants. I find this unproven as well. The respondents provided no

photos of their plants to show they were dead, dying, or otherwise affected by the applicants' yard fires. I dismiss this claim.

33. I turn to the respondents' breach of privacy claim. The respondents say that the applicants set up cameras in their yard which violated their privacy. However, there is no common law tort for breach of privacy in BC.⁴ The respondents could make this claim under BC's *Privacy Act*, however, section 4 of that act says that a claim for breach of privacy must be made at the BC Supreme Court. I have no jurisdiction to decide this issue. So, I refuse to resolve the respondents' claims about breach of privacy under section 11 of the CRTA.
34. Finally, I turn to the respondents' claim for the loss of cedar wood. The respondents did not clearly set out the basis for this claim. I understand from their submission that the respondents disposed of a cedar tree on their property, but would have used this cedar to build a fence if they had known that the applicants were going to build a fence. I dismiss this claim because the respondents provided no legal basis to hold the applicants responsible for damages in this situation.

INTEREST, FEES, AND EXPENSES

35. The *Court Order Interest Act* applies to the CRT. However, there is no evidence that the applicants paid any money to remove tarp pieces from their yard. So, I order no interest.
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. The applicants were successful, so I order the respondents to pay them \$125 for their CRT fees. The respondents were not successful, so I do not order any reimbursement for their CRT fees. None of the parties claimed any dispute-related expenses.

ORDERS

37. Within 30 days of the date of this decision, I order the respondents, jointly and severally, to pay the applicants a total of \$1,125, broken down as follows:

a. \$1,000 in damages, and

b. \$125 in CRT fees.

38. The applicants are entitled to post-judgment interest, as applicable.

39. I refuse to resolve the respondents' claim for breach of privacy.

40. I dismiss the respondents' remaining claims.

41. 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.

Peter Mennie, Tribunal Member

¹ *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13.

² 2020 BCPC 143.

³ *Vigh v. Coles*, 2022 BCSC 767.

⁴ *Ari v. Insurance Corporation of British Columbia*, 2015 BCCA 468, at paragraph 9.