



Civil Resolution Tribunal

Date Issued: July 23, 2025

File: SC-2024-005751

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Molsberry v. Wingerak*, 2025 BCCRT 1026

B E T W E E N :

TERRANCE LEE MOLSBERRY and SUSAN ELAINE LOBB

APPLICANTS

A N D :

ANDREW GARY WINGERAK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is between neighbors and about property damage. The applicants, Terrance Lee Molsberry and Susan Elaine Lobb, say that the respondent, Andrew Gary Wingerak, set fire to their property. They claim \$5,000 for the approximate cost of replacing damaged hedges and fencing. Their submissions indicate they have not yet paid for the repairs.

2. The respondent denies liability. He says the damage caused is minimal and less than the applicants' claim amount.
3. Mr. Molsberry represents the applicants. The respondent represents himself.
4. For the reasons that follow, I find the applicants have partially proven their claims.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought 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. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended. These are the CRT's formal written reasons.
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. 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. 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.

ISSUE

9. The issue in this dispute is whether the respondent is liable for property damage, and if so, how much damages are appropriate.

BACKGROUND, EVIDENCE, AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their 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 did not provide evidence though he had the opportunity to do so.
11. The background facts are undisputed except where noted. They are outlined in 2 main documents. The first is West Kelowna Fire Rescue's (WKFR's) records about the incident. The second is the RCMP's February 9, 2024 letter to Mr. Molsberry. The documents are consistent with each other and show the following.
12. On December 26, 2023, the respondent placed hot ashes along the fence dividing his property from the applicants'. He did so to kill weeds. The ashes caused the fence and hedges to catch fire. The applicants say, and I accept, that they were unaware of the fire until a third-party neighbour told them about it.
13. WKFR responded to an emergency call about the hedge fire and arrived at the respondent's address. It found that the neighbour, mentioned above, had put out the fire with a garden hose. WKFR ensured it was put out completely.
14. WKFR also called the RCMP for assistance as the respondent and one of the applicants were "having a dispute" at the time. The RCMP noted that the respondent admitted to placing the "fire ashes" that caused the hedge fire. WKFR and the RCMP advised the respondent to refrain from dumping ashes again. One of the applicants complained to the RCMP that the respondent set the fire intentionally. Ultimately, the RCMP was not satisfied that this was the case.

Is the respondent liable for property damage?

15. In submissions the respondent offered to settle this dispute. The applicants rejected the offer in their reply submissions. So, I need not comment on the respondent's offer any further.
16. I find the law of negligence applies. To prove liability in negligence, an applicant must show that the respondent owed them a duty of care, that the respondent's conduct breached the standard of care, the respondent's conduct caused the claimed damages, and that the damages were reasonably foreseeable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
17. There is no dispute that the 2 named applicants are the proper parties to make these claims. I find that, as the applicants' neighbour and homeowner, the respondent owed the applicants a duty of care. I find that the standard of care was reasonableness. I find that the respondent acted unreasonably by dumping hot ashes near the fence and hedges. This created a serious risk of harm to both property and people.
18. I am also satisfied that the respondent's actions caused damage, and that the damage was reasonably foreseeable. The hot ashes were clearly a fire hazard that could cause fire-related damage.
19. This leaves the issue of damages. The applicants provided security camera photos. They show that that some of the applicants' tallest hedges caught fire and "candled", as noted by the RCMP. The depicted fire and smoke were considerable. The applicants say the damaged cedar hedges were over 15 feet tall. I find this likely as the damaged hedges in the photos are quite tall when compared to the fence and house.
20. Photos of the fire's aftermath show the damaged hedges suffered significant burn damage. The wood fence also had blackened portions. The respondent says the damage was minimal, but the photos contradict this. So, I find the applicants are entitled to the cost of replacing the damaged hedges and damaged fence panel.

21. The applicants provided 2 quotes. The first of these quotes is from Westbank Nursery Ltd. It is undated and for a total of \$3,818.85. This total includes the cost of removing the damaged cedar trees, planting 2 new trees, providing soil and fertilizer, paying for “dump fees”, and replacing the damaged fence panel.
22. The second quote is from STL Landscape Inc. (STL) for a total of \$4,222.05. This November 2, 2024 quote includes the cost of replacing 3 cedar trees, providing garden soil, renting an excavator, and replacing one fence panel.
23. The applicants say the replacement cedar hedges from both companies will not be as tall as the damaged ones. The only quote that provides a replacement tree height is from STL and it says the trees will be 10 to 12 feet tall. As the applicants’ submission is at least partially corroborated by the quote, I accept it is likely true. I find the higher quote is a closer approximation to the applicants’ loss than the lower quote, because the replacement trees will be smaller. I order the respondent to pay \$4,222.05.
24. The applicants also provided 2 invoices from Bartlett Tree Experts, dated May 6 and October 16, 2024, for the cost of fertilizer. They each total \$131.25 for a total of \$262.50. Each contains a recommendation to fertilize all the surrounding trees as they might be under stress after the fire. The invoices also include the cost of fertilizing a group of trees in a different area from the fire.
25. I do not find it obvious or within common understanding that the surrounding, and more distant, unburnt trees require extra fertilizer. I find that this requires expert evidence to prove. There is no such evidence before me. So, I dismiss this part of the applicants’ claims.
26. The *Court Order Interest Act* applies to the CRT. Under section 2(a) of the *Court Order Interest Act*, pre-judgment interest must not be awarded on pecuniary, or monetary, losses that arise after the date of the order. There is no indication that the applicants have already paid to replace the trees and fence panel. So, I find they are not entitled to pre-judgment interest on the sum of \$4,222.05.

27. 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. I find the applicant is entitled to reimbursement of \$175 in CRT fees.

ORDERS

28. Within 30 days of the date of this decision, I order the respondent to pay the applicants a total of \$4,397.05, broken down as follows:

a. \$4,222.05 as damages for negligence, and

b. \$175 in CRT fees.

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

30. 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