



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lau v. Brown*, 2019 BCCRT 1366

B E T W E E N :

MAGGIE LAU

APPLICANT

A N D :

JASON BROWN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute between 2 owners is about responsibility for water damage. The applicant, Maggie Lau, co-owns strata lot 29 (unit 126) in a strata corporation, The Owners, Strata Plan BCS 4345 (strata). The respondent, Jason Brown, co-owns

strata lot 56 (unit 226) which is directly above unit 126. The strata is not a party to this dispute.

2. The applicant says that the respondent twice allowed water to leak from his strata lot into hers, eventually causing water stains to her bathroom and bedroom ceiling. The applicant seeks \$1,646.25 for an inspection and repairs, and \$1,200 for lost wages dealing with the repairs.
3. The respondent does not dispute that water leaked on 2 occasions from his strata lot into the applicant's strata lot. However, he says these leaks could not have caused the damage that the applicant discovered nearly 1 year later.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that

includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
8. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent is responsible for the water damage to the applicant's strata lot, and if so, what is the appropriate remedy.

BACKGROUND

10. The parties agree that water escaped twice from the respondent's strata lot and entered the applicant's strata lot via the applicant's bathroom fan. The first leak happened in late November or early December 2017 (first leak). The second leak happened on January 27, 2018 (second leak). I refer to these together as the water leaks. The parties agree that there was no visible damage apparent immediately after either leak and that the applicant's bathroom fan continued to operate as before.
11. The applicant first noticed water stains on or around December 20, 2018. Photos of the bedroom ceiling show a water stain around the fire sprinkler and in the corner where the ceiling meets a wall. The sprinkler is within a few feet of the door to the bathroom.
12. The applicant advised the strata about the water stains. The strata told her that it was not responsible for remediation work in cases of owner-to-owner loss below the

strata's deductible. The applicant then approached the respondent about making an insurance claim, but the respondent did not agree that the leaks caused the damage.

13. The applicant obtained an inspection from a plumbing, heating and air conditioning company, and a report from a restoration company that I discuss below. In May 2019 the restoration company returned and found the ceiling dry. They recommended to simply paint over the water stains. The applicant obtained quotes, purchased paint, and painted the ceiling.

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
15. The strata's bylaws do not specifically address water damage and associated repairs between strata lot owners. Bylaw 2(1) says that an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata. Bylaw 3(1) says that an owner, tenant, occupant or visitor must not use a strata lot in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy another strata lot.
16. Disputes involving water damage between strata lot owners normally require the applicant owner to prove that the respondent owner was negligent. To prove negligence the applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at para 3).
17. Because the leaks are admitted, I find that the crux of the matter in dispute is causation. The question is whether the water stains on the applicant's ceiling were caused by the leaks that happened 11 and 12 months earlier. As noted above, the

applicant bears the burden to show on the evidence that the stains were more likely than not caused by the leak. For the reasons that follow, I find that she has not met that burden.

18. The parties disagree about the volume of water that escaped and the precise source of the leaks within the respondent's strata lot.
19. The applicant says for both leaks, the respondent admitted that he was changing the water in his fish tank, left the tap on, and left his strata lot. She says for both leaks he returned upon request to turn off the tap. The applicant says the first leak lasted 4 to 5 hours. She says the second leak began around 5 pm and ended around 8 pm when the respondent returned home and shut off his water.
20. The applicant's video evidence of the second leak was taken at the time of the leak. It shows several drips per second coming from the applicant's bathroom fan. There is no video evidence from the first leak. The applicant does not say anything about volume of water from the first leak except that the fan was "dripping a lot."
21. The respondent denies that he was changing water in his fish tank for either leak.
22. The respondent says the first leak came from a crack in his toilet fill valve. He noticed it upon flushing and called the building manager, who gave him the applicant's phone number. He says that he was able to clean up the small amount of water on his floor with towels, but some escaped around the toilet where there was inadequate sealing. He says he went to the applicant's unit and found a few drops of water on the floor, but the water had stopped dripping from the fan. An hour later he returned to the applicant's unit and the ceiling was dry to the touch and the fan was operational.
23. The respondent says the second leak was from a 1-gallon bucket with a 'drip-proof' spigot resting on his closed toilet seat lid. He does not explain the purpose of the bucket. The respondent says the bucket tipped and leaked from the spigot. He respondent says the water escaped through a corner where the bathroom vanity meets the tiled floor, behind his toilet, where there was insufficient caulking.

24. The respondent says he was home at the time the applicant's co-habitant called to alert him about the second water leak. He says he addressed the leaking bucket, and 10 minutes later visited the applicant's strata lot and found the dripping very slow. He says the video captures the peak of the dripping but does not show how quickly the dripping stopped.
25. The respondent's call log for January 27, 2019 indicates incoming phone calls at 3:53 pm and 8:34 pm. The phone numbers are not identified. I find the call log contradicts the applicant's evidence that she called the respondent immediately upon discovering the leak, and that the leak started around 5 pm stopped around 8 pm.
26. On balance, I prefer the respondent's evidence about the source and duration of the leaks. He provided more detail, and the timing of the leaks and responses is supported by his phone records. His evidence about the volume of water that escaped is also consistent with the undisputed evidence that his strata lot suffered no damage and neither he nor the strata made an insurance claim. I find the first leak was a small amount of water that stopped dripping within an hour. There is insufficient evidence to determine how long the second leak lasted, but I find that the video represents the most active state of the leak at several drips per second.
27. It is undisputed that there was no visible damage after the leaks stopped and for over 10 months after. Accordingly, the applicant must rely on other evidence to establish causation.
28. On January 17, 2019, a plumbing, heating and air conditioning company visited the applicant's strata lot. The notes on the invoice document two "decently sized" water stains on the ceiling in the bathroom and bedroom in unit 126. The author of the notes inspected unit 226 and found no signs of an active leak. However, the author said based on the information provided by the applicant about the water leaks, they believe the stains and the leaks are correlated.
29. I find the January 17, 2019 invoice does not establish causation on a balance of probabilities. First, the author is not identified, and their qualifications are not

provided. It is not clear that the author had any expertise in identifying sources of water damage.

30. Second, the author's conclusions appears to be based solely on the applicant's description of "large amounts of water flow for a prolonged period of time causing these stains." That description is subjective, and if my findings about the volume and duration of water flow above are correct, it is also an overstatement. It is not apparent that the author was made aware that the leaks occurred 11 months prior to the stain appearance. The author also appears to accept the applicant's conclusions about causation. There is no evidence that the author conducted an independent investigation or testing to try to confirm the source of the water damage. There is no explanation of why the stains may or may not be consistent with water leaking from a fan, or what path the water may have taken. There is no explanation of whether, or by what process, the water stains could appear 11 months after the leak. On the whole, I find the January 17, 2019 invoice does not support the conclusion that the leaks caused the water damage that appeared in January 2019.
31. In a statement, the building manger, ES, said that she attended the inspection (presumably on January 17, 2019). She said, "it was agreed that the water damage did come from above." She also said the respondent offered to paint the applicant's ceiling. The respondent denies this.
32. I place little weight on ES's statement that it was agreed that the water damage came from above. ES did not provide her qualifications. She did not specify what "above" meant. She also did not say who agreed. I find that even if the respondent offered to paint the applicant's ceiling, as ES said, that is not determinative of causation.
33. A restoration company also visited the applicant's strata lot and provided a 1-page report. The report is undated, but the applicant estimates it was created in February 2019. The report noted moisture in the applicant's bedroom ceiling. It said, "from seeing the video of the water coming through the ceiling it's not surprising that it's

still wet.” Presumably the author, BC, was referring to the same video the applicant submitted to the tribunal with water dripping from the bathroom fan. BC said there might be mould on the back of the drywall and framing and recommended opening the ceiling and spraying with an antimicrobial agent.

34. BC is identified as a project manager. As his qualifications are not stated, it is not clear whether he has the expertise necessary to determine the cause of water damage. I accept that the ceiling was wet, but there was no attempt to find the source of the moisture. Although BC presumably viewed the video of the second leak and said it was “not surprising” that the ceiling was still wet, it is not clear whether BC was aware of date of the video and the leak. He did not explain the possible mechanism of water migration over 11 months. I find that this report does not support the conclusion that the leaks caused the water damage claimed by the applicant.
35. The respondent submitted an email from an accredited home inspector, CT. CT said water damage typically appears on drywall ‘almost immediately’ after the leak, and it is highly unlikely that water could lie dormant in a ceiling for many months and only show damage to drywall 10-12 months later. I have given little weight to this evidence because there is no evidence that CT has any experience with water leaks in strata buildings. From his answers, which referred to vapour barriers in attics, it is not clear that he had sufficient information to provide relevant evidence.
36. The applicant submitted text messages from another person she says is an accredited home inspector. This person said that without knowing more information or visually inspecting the site, they could not give an opinion. I take the applicant’s point to be that I should not be persuaded by the respondent’s home inspector’s email because the home inspector did not visually inspect the site. I agree.
37. However, I find that the evidence the applicant provided was not sufficient to establish causation. I have found that the conclusions in the invoice, the restoration company’s report and the building manager’s statement were based on unverified

assumptions and were unpersuasive. I also place significant weight on the fact that there was no report of water damage until 11 months after the second leak.

38. The applicant has failed to show that it is more likely than not that the damage to her strata lot was caused by water escaping from unit 226. As a result, I do not need to consider the applicant's requested remedies. However, I will note that in any event I would not have allowed the \$1,200 claim for missed work as there was no evidence of actual wage loss.

TRIBUNAL FEES AND EXPENSES

39. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful, I find that she is not entitled to any reimbursement. The respondent did not pay any fees or claim any expenses.

ORDER

40. I dismiss the applicant's claims and this dispute.

Micah Carmody, Tribunal Member