



Civil Resolution Tribunal

Date Issued: October 1, 2021

File: ST-2020-008407

Type: Strata

Civil Resolution Tribunal

Indexed as: *Fostier v. Bai*, 2021 BCCRT 1057

Default decision – non-compliance

B E T W E E N :

LUCIEN FOSTIER

APPLICANT

A N D :

YIN BAI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant Lucien Fostier, due to the applicant's non-compliance with the CRT's mandatory directions as required, as discussed below.

2. This dispute is about a water leak. The applicant lives below the respondent, Yin Bai. The applicant claims \$1,764 in repair costs after a water leak from the respondent's shower.
3. The parties are each self-represented.
4. For the reasons that follow, I have dismissed the applicant's claims.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
 - a. Hear the dispute in accordance with any applicable rules,
 - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. The case manager has referred the applicant's non-compliance with the CRT's rules to me for a decision as to whether the CRT ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT's formal written reasons. The CRT has jurisdiction, or legal authority, over strata property claims brought under section 121 of the 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 parties to a dispute that will likely continue after the dispute resolution process has ended.

8. I note that the applicant's claims are tort claims against the respondent. A tort is a legal wrong under the common law, such as negligence or nuisance. I find that the CRT does not have jurisdiction under its strata property jurisdiction to decide a tort claim between owners (see *Alameer v. Zhang*, 2021 BCCRT 435). In previous disputes, the CRT has given applicants the opportunity to re-classify strata property claims as small claims, because the CRT has jurisdiction over tort claims up to \$5,000 (see, for example, *Skelly v. Fayad*, 2021 BCCRT 803).
9. I decided to resolve the applicant's claim as a strata property claim for 2 reasons. First, the applicant has failed to communicate with the CRT so it would be difficult, if not impossible, to get their position on re-classifying the dispute. Second, in the circumstances of this dispute, there would be no practical difference to re-classifying it as a small claim. There are 2 relevant distinctions between small claims and strata property claims. First, the CRT can only resolve small claims up to \$5,000, but has no monetary limit for strata property claims. In this dispute, the applicant's claim is under \$5,000. Second, the CRTA sets out a unique process for when parties disagree with a small claims decision. However, this process is not available for decisions where a party is found to be non-compliant. For these reasons, I find that there is no prejudice to either party in considering this dispute as a strata property claim.
10. I also note that my decision to dismiss the applicant's claims would not be different if the dispute was re-classified as a small claim.
11. Where permitted under section 123 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

12. The first issue is whether the applicant is non-compliant with the CRTA and the CRT's rules.

13. If the applicant is non-compliant, the second issue is whether I should decide this dispute without the applicant's further participation, refuse to resolve it, or dismiss it.

EVIDENCE AND ANALYSIS

Non-compliance

14. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to follow the case manager's directions as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1) and 5.1 to 5.4. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
15. The applicant submitted their application for dispute resolution on October 31, 2020. As mentioned above, the applicant asks for \$1,764, which they based on a repair quote. In their Dispute Response, the respondent did not dispute that there was a leak but said that the applicant should use their insurance to cover the repair costs.
16. On December 15, 2020, during the facilitation process, the respondent agreed to pay a contractor to do the necessary repairs if the applicant provided photos of the damage. The applicant provided photos the next day. The respondent asked the applicant to have the contractor contact the respondent directly with an invoice when the repairs were complete. At some point that is not clear in the evidence, the respondent advised the case manager that they had paid for the repairs.
17. On April 6, 2021, the case manager asked the applicant to confirm that the repairs were complete and paid for, and suggested the applicant withdraw the dispute. The case manager followed up with voicemails on April 22 and 30, 2021, requesting that the applicant contact the case manager. Also on April 30, 2021, the case manager emailed the applicant requiring a response to the case manager's communications by May 6, 2021.
18. On July 23, 2021, the case manager emailed the applicant requiring a response to the case manager's communications by August 6, 2021. In this email, the case

manager warned the applicant that the CRT may decide the dispute without the applicant's further participation if they did not comply with the CRT's directions.

19. The applicant did not respond to any of the case manager's emails or voice messages.
20. The case manager then referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision.
21. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for their failure to respond to the case manager's requests for contact.

Should the CRT hear the dispute without the applicant's further participation?

22. As noted above, the applicant initiated this CRT dispute. The applicant has provided no explanation about why they have failed to communicate with the CRT as required. In the circumstances, I find that the applicant's failure to respond to the case manager is likely because the dispute had resolved to the applicant's satisfaction. I find the case manager made a reasonable number of contact attempts, through both the email address and phone number that the applicant provided. Given the multiple attempts, I find it is more likely than not that the applicant knew about the case manager's attempts and failed to respond.
23. Rule 1.4(2) states that if a party is non-compliant, the CRT may:
 - a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
 - b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
 - c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and

- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.
24. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
 - b. The stage in the facilitation process at which the non-compliance occurs,
 - c. The nature and extent of the non-compliance,
 - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
25. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them, and knew the consequences if they failed to respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute.
26. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources trying to have the applicant confirm that the dispute is resolved.
27. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
28. In deciding to dismiss the claims, I have put significant weight on the following factors:

- a. The likelihood that the dispute resolved to the applicant's satisfaction,
- b. The respondent is not prejudiced by such an order, and
- c. The need to conserve the CRT's resources.

29. Therefore, I dismiss the applicant's claims and this dispute.

30. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find they are not entitled to a refund of paid CRT fees. The respondent did not pay any CRT fees or claim expenses.

ORDERS

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

Eric Regehr, Tribunal Member