



Civil Resolution Tribunal

Date Issued: January 16, 2024

File: SC-2022-009621

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Dorgelo*, 2024 BCCRT 040

B E T W E E N :

CHU LIU

APPLICANT

A N D :

ERIC DORGELO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about fire damage. The applicant, Chu Liu, owns and rents out unit 110 in a strata building. The respondent, Eric Dorgelo, owns and rents out unit 108,

where a fire occurred on June 16, 2022. The fire and resulting damage affected both units.

2. Mr. Liu says his tenant, T, could not live in unit 110 until August 20, 2022. Mr. Liu claims \$1,899.66 in lost rent for the period he says unit 110 was uninhabitable. Mr. Liu represents himself.
3. Mr. Dorgelo says the cause of the fire was not determined but he appears to concede it was likely caused by his tenant. He says neither he nor his tenant were negligent so the claim should be dismissed. An insurance adjuster represents Mr. Dorgelo.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority 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.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, 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.
6. 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.

ISSUE

7. The issue in this dispute is whether Mr. Dorgelo is liable to Mr. Liu in negligence or nuisance for lost rent.

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Mr. Liu must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. On June 16, 2022, a fire started in unit 108's kitchen. Mr. Dorgelo owns unit 108 and, at the time, rented it to BD. BD is not a party to this dispute. An investigative report produced for Mr. Dorgelo's insurer documents BD's statement about what happened. They said between 9 and 10 pm they left the unit, intoxicated, to get milk. They returned 8-12 minutes later to fire alarms and smoke coming from the unit. BD could not remember if they had turned on a stove element before leaving. The stovetop was partially broken, and BD used it to store all kinds of things. The investigator determined that the fire started in the kitchen, and more specifically the "top right area of the stovetop." On the stovetop, the investigator found melted unidentifiable plastics along with a toaster, tongs, a camera charger and a hair trimmer. None of these items, nor the stovetop, showed signs of failure or malfunction. The investigator concluded that BD probably turned on the top right heating element which then ignited something stored on the stovetop. They said there were no other plausible hypotheses. Mr. Dorgelo concedes that this is the most likely explanation. So, for the purposes of this dispute, I accept that BD negligently started the fire.
10. Mr. Liu says Mr. Dorgelo is liable because he was negligent as a landlord. To succeed in negligence, Mr. Liu must prove that Mr. Dorgelo owed him a duty of care, Mr. Dorgelo breached the applicable standard of care, and that Mr. Liu experienced harm caused by the breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
11. I will first consider causation because I find causation is determinative. As I explain below, I find Mr. Liu has not established that Mr. Dorgelo's alleged breach of the standard of care caused the fire and Mr. Liu's lost rental income.
12. Mr. Liu says Mr. Dorgelo allowed unit 108 to exist in a state of excess clutter and failed to reasonably inspect unit 108 for fire hazards. Photos in the investigative report

show that there were mattresses, clothing, tools, drug paraphernalia and garbage throughout unit 108. The report concluded that unit 108 was in a condition “on the hoarding scale.” Mr. Liu says that the fire would not have spread to the extent that it did if unit 108 had been kept in non-hoarding condition. Mr. Liu also relies on his tenant’s account, relayed through text messages, that BD refused to allow the strata corporation or its contractor to enter the strata lot to conduct routine smoke alarm tests. I infer he argues that this increased the risk of fire or demonstrated that BD was not a responsible tenant. I note there is no evidence that Mr. Dorgelo was aware of BD’s refusal to allow smoke alarm inspections.

13. Causation involves two elements – factual and legal causation. The test for factual causation is known as the “but for” test (see *Nelson (City) v. Marchi*, 2021 SCC 41). The question is: but for Mr. Dorgelo’s alleged carelessness, would Mr. Liu have avoided the loss? In other words, if Mr. Dorgelo had conducted more frequent inspections or been more aware of what BD was doing in unit 108, would the fire have been avoided? I find the answer is no. First, there is no evidence that the smoke alarm in unit 108 did not work when the fire happened. Second, the investigative report indicated that the fire was contained to the kitchen. There is no evidence that any of the clutter around the rest of the unit caught fire or contributed to the fire’s spread. Even if Mr. Dorgelo inspected unit 108 regularly, BD may still have inadvertently left the stovetop on with combustible items resting on it. A landlord cannot be expected to inspect a rental unit daily to ensure nothing combustible is left on the stovetop. In order to find Mr. Dorgelo liable in these circumstances, I would need an expert opinion that the fire was caused, at least in part, by Mr. Dorgelo’s failure to inspect unit 108 or something else he did or failed to do as an owner and landlord. There is no such evidence here.
14. My conclusion that Mr. Liu has not proven factual causation means I do not need to consider legal causation or the other elements of the negligence test, including whether Mr. Dorgelo owed Mr. Liu a duty of care. I note that courts have said only in rare circumstances will a landlord owe a duty of care to third parties for the negligence of a tenant (see e.g., *Qu v. Xu*, 2021 ONSC 4198 at paragraphs 41-42). Given that

the parties did not make submissions about the duty of care, and because it does not affect the outcome here, I have not addressed it further.

15. Although Mr. Liu did not specifically raise it, I also considered whether Mr. Dorgelo could be liable in nuisance. However, a landlord is not liable for their tenant's nuisance unless they specifically authorized the tenant to act in a way that was likely to cause the nuisance, or there was a high probability that the nuisance would result from the purposes for which the property was rented (see *Shahgaidi v. Zhang*, 2018 BCSC 2082 at paragraph 32). The evidence before me does not support either of those conclusions. With that, I dismiss Mr. Liu's claim.
16. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Dorgelo was successful but did not pay CRT fees. I dismiss Mr. Liu's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

17. I dismiss Mr. Liu's claims and this dispute.

Micah Carmody, Tribunal Member