



Civil Resolution Tribunal

Date Issued: January 22, 2024

File: SC-2022-008201

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shiu v. Coba*, 2024 BCCRT 68

B E T W E E N :

RACHEL SHIU

APPLICANT

A N D :

JHONATAN COBA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a water leak in a strata building.
2. Rachel Shiu owns a strata lot (unit 2002) immediately below Jhonatan Coba's strata lot (unit 2102). Ms. Shiu says Mr. Coba's toilet caused water damage to her bathroom ceiling. Ms. Shiu claims \$2,483.25 for the ceiling's repair costs.

3. Mr. Coba denies responsibility for Ms. Shiu's repair costs. He says he acted promptly to replace his toilet upon notice of a potential leak from the strata manager. Mr. Coba also says the strata's bylaws make owners responsible for their own repairs. So, he says he owes Ms. Shiu nothing.
4. The parties are each self-represented.

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. In resolving disputes, the CRT must apply principles of law and fairness.
6. 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, without the need for an oral hearing.
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 a court of law.

ISSUE

8. The issue in this dispute is whether Mr. Coba is liable in negligence or nuisance for Ms. Coba's claimed damages.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Shiu, as the applicant, must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties'

submissions and evidence but refer only to that which I find necessary to explain my decision.

Background

10. The following background is undisputed.
11. Ms. Shiu and Mr. Coba each rent out their strata lots. In late February 2022, Ms. Shiu's tenant reported a "swollen" bathroom ceiling in unit 2002. Ms. Shiu notified the strata manager of a potential leak.
12. On March 5, the strata manager attended unit 2102 while the tenants were home to try and identify the leak's source. The strata manager spoke to the tenants about a past issue of water spilling onto the bathroom floor, which was resolved with a better shower curtain. As there was no visible water on the floor at the time of the strata manager's visit and no active leak, they concluded the swollen bathroom ceiling might be the result of the past water spillage. They advised Ms. Shiu to report any new active drips from her bathroom ceiling. Ms. Shiu said she would "leave it for now and see what happens" and ask her tenant to "keep an eye on it".
13. On June 1, Ms. Shiu's tenant reported further swelling of the bathroom ceiling to the strata manager. The strata manager contacted Mr. Coba on the same day suggesting something from unit 2102 was causing the leak. The strata manager said if the source was not readily identifiable, Mr. Coba should fix his toilet wax seal. On June 20, Mr. Coba advised Ms. Shiu and the strata manager he had replaced the entire toilet. On July 13, Ms. Shiu told Mr. Coba the ceiling had dried, and it appeared that whatever leak there was had stopped after Mr. Coba replaced the toilet.
14. In early August, Ms. Shiu had unit 2002's water-damaged bathroom ceiling repaired, and was invoiced \$2,483.25, the amount she claims in this dispute.

The applicable law and analysis

15. Ms. Shiu says since the damage in unit 2002 was caused by a leak in unit 2102, Mr. Coba is responsible for the repair cost. There is no documentary evidence confirming or even suggesting the cause or source of the damage to unit 2002's bathroom ceiling, such as a report from Ms. Shiu's contractor. I find the strata manager's hypothesis that there was an issue with Mr. Coba's toilet wax seal insufficient to prove the damage's cause. I note Mr. Coba reported his plumber found no issues with the toilet on inspection.
16. Even so, I find it unlikely Mr. Coba would have replaced the entire toilet unless he had at least some indication it was leaking and causing damage to unit 2002's ceiling. Also, the ceiling undisputedly dried up shortly after Mr. Coba replaced the toilet, and Ms. Shiu does not say there has been further water damage.
17. Given all of this, on balance, I find unit 2102's toilet likely caused the damage to unit 2002's bathroom ceiling.
18. However, as discussed in the non-binding but persuasive decision *Zale et al v. Hodgins*, 2019 BCCRT 466, owners may be surprised to learn they are responsible for repairs to their strata lot even though the source of the damage originated in another strata lot. Where one strata lot owner seeks to recover from another the cost of water damage repair, they must prove liability in negligence, nuisance, or a specific strata bylaw making an owner liable to their neighbour for the damage. Absent an applicable bylaw, which is not argued here, Ms. Shiu must show Mr. Coba is liable in either negligence or nuisance.
19. To succeed in negligence, Ms. Shiu must prove Mr. Coba owed her a duty of care, he breached the applicable standard of care, and Ms. Shiu sustained damage caused by the breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
20. As neighbours in a strata building, I find Mr. Coba owed Ms. Shiu a duty of care. I find the applicable standard of care is reasonableness (see, for example, *De Angelis v. Dodd*, 2023 BCCRT 69 and *Burris v. Stone et al*, 2019 BCCRT 886).

21. A nuisance occurs when someone unreasonably interferes with the use or enjoyment of another person's property. Where a person does not intentionally create a nuisance, they will only be liable if they either knew or reasonably should have known about the potential nuisance, and failed to do anything to prevent it (see *Theberge v. Zittlau*, 2000 BCPC 225). Further, 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).
22. Here, I find the same thing is required to prove liability in negligence or nuisance, namely, that Mr. Coba knew or should have known about the leak, and unreasonably failed to prevent or respond to it in a timely manner.
23. There is no evidence Mr. Coba knew about a leak causing damage to Ms. Shiu's ceiling in February 2022 when her tenant first reported the swollen ceiling. Emails between Ms. Shiu and the strata manager show they discussed next steps between themselves, but Mr. Coba was not copied on those emails. Ms. Shiu does not say either she or the strata manager approached Mr. Coba at that time, and the evidence shows Ms. Shiu decided to "leave it for now". Mr. Coba says he was not informed about the strata manager's March visit to unit 2102 at the time, and I find this was likely the case.
24. When Ms. Shiu's tenant raised the problem again in June 2022 and the strata manager advised Mr. Coba to replace his toilet wax seal, he replaced the toilet in less than 3 weeks. As noted above, shortly after that, Ms. Shiu reported that her ceiling had dried up. In submissions, Ms. Shiu expresses appreciation that Mr. Coba acted quickly, and I agree that he did. I find from the time Mr. Coba became aware that his toilet was the possible cause of a leak in unit 2002, he took reasonable, timely steps to respond.
25. Should Mr. Coba have known about the potential leak before he acted in June 2022, and done something to prevent it? Ms. Shiu points to a 2018 leak in unit 2102's

bathroom that undisputedly damaged unit 2002. At that time, Mr. Coba replaced the toilet wax seal as well as silicone in the bathtub, and removed the dishwasher. There is no evidence of further water damage until Ms. Shiu's tenant reported the swollen bathroom ceiling in February 2022. Since Mr. Coba fixed the 2018 leak and there were no more reported problems until 2022, I find there is nothing he could reasonably have done to prevent the 2022 leak.

26. In these circumstances, I find Mr. Coba is not liable in negligence or in nuisance for the damage to unit 2002's bathroom ceiling, and so he is not responsible for its repair costs. I dismiss Ms. Shiu's claim.
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. As Ms. Shiu was unsuccessful, I dismiss her claim for CRT fees. Neither party claimed dispute-related expenses.

ORDER

28. I dismiss Ms. Shiu's claims and this dispute.

Megan Stewart, Tribunal Member