



Civil Resolution Tribunal

Date Issued: August 2, 2024

File: SC-2023-006928

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hirsch v. City of Chilliwack*, 2024 BCCRT 743

BETWEEN:

WALDEMAR JEFFERSON HIRSCH

APPLICANT

AND:

CHILLIWACK, CITY OF

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about water drainage. The applicant, Waldemar Jefferson Hirsch, was experiencing flooding on his property, requiring the constant use of a sump pump. Mr. Hirsch says he ultimately discovered the flooding was due to his property being unknowingly connected to the municipal drainage system. Mr. Hirsch says the respondent, the City of Chilliwack, failed to properly investigate his flooding problem

and keep adequate records of drainage connections. He seeks \$5,000 from the City of for his costs of investigating the issue.

2. The City denies any liability for Mr. Hirsch's investigation costs.
3. Mr. Hirsch represents himself. The City is represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. 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.
5. Section 39 of the CRTA says that 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, nor was one requested.
6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
7. 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.

Evidence

8. I was unable to open 4 pieces of Mr. Hirsch's evidence. All of the items were identified as photographs of the flooding water or working sump pumps. The parties do not dispute that Mr. Hirsch's property suffered flooding and required sump pumps. So, I

find nothing turns on the actual photographs. Given the CRT's mandate, I found it was not necessary to ask Mr. Hirsch to re-submit the photographs, and I made my decision without them.

ISSUE

9. The issue in this dispute is whether the City must reimburse Mr. Hirsch any money for his drainage investigation costs.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Hirsch must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. For several years, Mr. Hirsch experienced flooding problems on his residential property. Despite hiring plumbing and drainage companies to investigate, the problem did not go away. In late 2020, Mr. Hirsch contacted the City for assistance. JB, a supervisor with the City's Operations Department, suggested the issue could be with Mr. Hirsch's perimeter drains, which may have eroded given his property's age. The City said JB also reviewed the City's database and found no record of a storm service connection to Mr. Hirsch's home. So, JB recommended Mr. Hirsch have the City install a service connection. Mr. Hirsch paid the City \$1,480 and this work was completed in January 2021.
12. During the installation, Mr. Hirsch says the City's employees had to pump water out of the area they were working in. He says he noticed the water the City's crew was pumping out to the street was the same colour as the water appearing in Mr. Hirsch's sump basins. So, Mr. Hirsch says he asked the City's employees to conduct a dye test or use a camera scope to see why the water was the same colour. JB undisputedly told Mr. Hirsch it was not necessary at the time, and again suggested the issue may be with his perimeter drains.

13. Mr. Hirsch continued to have water issues after the new service connection was installed. From May 2021 to April 2022, he paid two plumbing and drainage companies a total of \$7,218.40 in investigation and repair costs. However, I note some of those expenses, though invoiced in 2021, were for work before the City installed the new service connection. The 2020 work notes included recommending Mr. Hirsch contact the City about whether his home was ever hooked up to the storm sewer. Presumably this led to Mr. Hirsch asking the City about the connection.
14. In any event, on April 7 and 8, 2022, A&M Underground Services attended Mr. Hirsch's home for investigation. Mike Roersma, A&M's owner, provided an undated report as evidence. In his report, Mr. Roersma explained he was looking for where Mr. Hirsch's home drained to, as the City did not have any records. Mr. Roersma dug up the front drain tile and found a "T" in the old clay tile heading towards the street. Mr. Roersma put a camera down the pipe and discovered it led to a larger city main pipe outside the property line (the old connection). City workers attended to inspect, and instructed Mr. Roersma to cap the pipe, which he did. The evidence shows that at some point, the City had decommissioned or replaced the main pipe. Mr. Roersma said that is when Mr. Hirsch began experiencing the flooding issues.
15. Mr. Roersma said the work appeared to be original, with no signs of repair or upgrade, and may have pre-dated current recordkeeping. He further stated that the old connection was Mr. Hirsch's home's only source of drainage, and he is now permanently on a pump system. He did not explain the relevance of this.
16. Although he does not use the term, Mr. Hirsch's claim is in negligence. He says the City failed to adequately investigate his flooding, specifically by declining to perform a dye test or camera scope, which he requested in January 2021.
17. To prove negligence, Mr. Hirsch must show that the City owed him a duty of care, the City failed to meet the applicable standard of care, and that failure caused Mr. Hirsch's reasonably foreseeable damages (see: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

18. The City says it did not owe Mr. Hirsch a duty of care because the City was not “formally engaged” to resolve his flooding issues. There is no indication the City was acting on a policy decision, so I find it cannot rely on a “policy defence”, which is a legal principle that says a City does not owe a duty of care to citizens for policy decisions. So, while it may be true that the City was not “formally engaged”, I find the City does owe a resident a duty of care to maintain its water supply and pipelines, investigate potential issues with its system, and to reasonably keep records of City water work installations (see *Ward v. Cariboo Regional District*, 2021 BCSC 1495).
19. The next question is whether the City breached the standard of care. In claims of professional negligence, expert evidence is typically required to establish the applicable standard of care, and whether it was breached. This is because the standards of a particular profession are usually outside an ordinary person’s knowledge and experience (see: *Bergen v. Guliker*, 2015 BCCA 283). The exceptions to this are when the breach is obvious or when the conduct in question is non-technical in nature (see: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).
20. As noted, Mr. Hirsch says the City negligently failed to do a dye test or camera scope to see where the water on his property was coming from. I also infer Mr. Hirsch argues the City’s recordkeeping was negligent, given it had no record of the old connection.
21. The City says it only performs dye tests or camera scopes on City infrastructure, not for private citizens. It also says it has records dating back to 1949, and that the old connection may have been installed by a previous owner of Mr. Hirsch’s home, without the City’s involvement. There is no evidence before me about the age of Mr. Hirsch’s home.
22. First, without expert evidence proving what the standard of care is, I am unable to find the City’s choice not to dye test or camera scope Mr. Hirsch’s water issues was a breach. Similarly, I find Mr. Hirsch has not proven the City’s recordkeeping was negligent. I find neither of these alleged breaches are obvious. So, I find Mr. Hirsch has not proved the City was negligent.

23. Although not specifically argued by Mr. Hirsch, the City also says it cannot be held liable in nuisance, under section 744 of the *Local Government Act*. A nuisance occurs when a person (which includes a municipality) unreasonably interferes with another person's use or enjoyment of their property. However, section 744 of the *Local Government Act* says, in part, that a municipality cannot be liable in nuisance for damages arising from the breakdown or malfunction of a water or drainage facility or system. So, to the extent Mr. Hirsch may argue his flooding issues are a result of the main pipe failing or draining incorrectly, I find Mr. Hirsch cannot rely on the law of nuisance.
24. Given all the above, I dismiss Mr. Hirsch's claims.
25. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Mr. Hirsch was unsuccessful, so I dismiss his claim for reimbursement of tribunal fees. The City did not pay any tribunal fees or claim dispute-related expenses.

ORDER

26. Mr. Hirsch's claims are dismissed.

Andrea Ritchie, Vice Chair