



# Civil Resolution Tribunal

Date Issued: August 4, 2020

File: ST-2020-001352

Type: Strata

Civil Resolution Tribunal

Indexed as: *Phang v. Huang*, 2020 BCCRT 851

B E T W E E N :

INGE-LISE PHANG

**APPLICANT**

A N D :

CATHY HUANG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a water leak in a strata corporation.
2. The applicant, Inge-Lise Phang, owns a strata lot (unit #101) in a strata corporation.  
The respondent, Cathy Huang, owns the strata lot above Ms. Phang's (unit #201).

Ms. Phang says that water escaped from unit #201 on several occasions resulting in damage to her strata lot. She says that Ms. Huang refused to accept responsibility for the leak and Ms. Phang seeks \$1,850 to repair the damage. Ms. Phang represents herself.

3. Ms. Huang says that plumbers were unable to find the source of the leak and denies the leak is her fault. Ms. Huang represents herself.
4. The strata corporation is not a party to this dispute.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
6. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "she said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT 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 CRT rules, in resolving this dispute 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**

9. The issues in this dispute are:
  - a. Must Ms. Huang pay for damages to Ms. Phang's hallway bathroom arising from escaping water, and if so, how much?
  - b. Must Ms. Huang pay for damages to Ms. Phang's ensuite bathroom arising from escaping water, and if so, how much?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil dispute such as this, the applicant Ms. Phang must prove her claim on a balance of probabilities. I have reviewed all of the parties' submissions and evidence provided but refer only to that needed to explain my decision. I note that Ms. Huang chose not to submit any evidence in this dispute, despite having the opportunity to do so.
11. Ms. Phang says that water leaked from unit #201 into her hallway bathroom in 2015 and 2017, which she reported to the strata's property management company. However, it seems that these leaks resolved, and in any event, I find these previous alleged leaks are not at issue in this dispute.
12. Relevant to this dispute, Ms. Phang says that she discovered water leaking from her hallway bathroom ceiling on November 3 and 4, 2018. The evidence shows that Ms. Phang advised the property manager of the leak. The building caretaker investigated Ms. Phang's unit on November 7, 2018, but there was no active leak at that time. The evidence shows that the caretaker was initially unable to contact the tenant in unit #201 to investigate the leak, but eventually scheduled a plumber inspection for November 29, 2018. The plumber's invoice in evidence says it tested

unit #201's bathroom toilet, pipes, drain lines, shower, and faucet but could not find the source of any leak.

13. Ms. Phang says that again she observed water leaking from her hallway bathroom ceiling on December 15 and 24, 2018. She provided the property manager with a video of the leak. The property manager informed Ms. Huang of the leak in unit #101 by letter dated January 3, 2019 and requested access to unit #201 for an investigation within 7 days.
14. The evidence shows that the caretaker arranged for the investigation of both units to take place on January 10, 2019, but that nobody was available in unit #201 to grant the plumber access for the investigation. The plumber's invoice for its investigation in unit #101 says it opened the bathroom ceiling and found water marks. The invoice also commented that the leak was from the toilet drainage pipe in unit #201 and to fix the problem, the plumber needed access to unit #201 to remove and re-install the toilet.
15. The evidence shows the property manager sent another letter to Ms. Huang dated January 17, 2019 confirming she had not responded to their January 3 letter and demanding access to unit #201 within 48 hours to investigate and repair the leak. The evidence also shows that Ms. Huang did not provide access to her unit, despite the property manager's follow up requests to both Ms. Huang and her tenant in unit #201. The property manager sent Ms. Huang a final notice on March 27, 2019 to provide access within 7 days. The evidence shows that Ms. Huang responded the following day.
16. On April 3, 2019, plumber entered unit #201 and confirmed the leak into unit #101's hallway bathroom was coming from the toilet in unit #201. The plumber replaced the toilet and the leak stopped.
17. Ms. Phang says that on July 17, 2019, she observed water leaking out of the ceiling in her ensuite bathroom. The caretaker arranged for a plumber inspection that day. The tenant in unit #201 was home and granted access to the plumber, who confirmed the source of the leak was a plugged and overflowing toilet. The

plumber's invoice also commented that the toilet's tank was broken. The unit #201 tenant was advised to stop using the toilet until it could be repaired. There is no evidence that this leak continued beyond July 17, 2019.

***Must Ms. Huang pay for damages to Ms. Phang's hallway bathroom?***

18. Ms. Phang says that because the leak came from unit #201, Ms. Huang should be responsible for costs to repair her ceiling. Ms. Huang says she should not be responsible because the leak was not due to human error.
19. The *Strata Property Act* (SPA) and the strata's bylaws do not contain provisions that specifically address water damage and repair costs between strata lot owners. Bylaw 2(1) states that an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata corporation. There is no suggestion in this dispute that the claimed costs are the strata corporation's responsibility.
20. Based on the relevant law, and the lack of any bylaw to the contrary, I find that Ms. Phang must prove that Ms. Huang is legally liable for her hallway bathroom damage, either under the law of negligence or the law of private nuisance.
21. To prove negligence, Ms. Phang must show that Ms. Huang owed her a duty of care, that Ms. Huang breached the standard of care, that Ms. Phang sustained damage, and that the damage was caused by Ms. Huang's breach. I find Ms. Huang owed Ms. Phang a duty of care as both parties are strata lot owners in the same strata.
22. In this case, the applicable standard of care is reasonableness, based on what would be expected of an ordinary, reasonable, and prudent person in similar circumstances: see, for example, *Spier v. Walton*, 2020 BCCRT 149 at paragraph 33. In other words, the fact that the toilet leaked does not automatically mean that Ms. Huang was negligent. The standard is not perfection. There must be some evidence that Ms. Huang's actions or inaction fell below a reasonable standard and caused the loss.

23. First, there is no evidence that Ms. Huang or her tenant caused the leak in unit #201's hallway bathroom toilet or that there was any sign in unit #201 that the toilet was leaking. However, Ms. Phang argues that Ms. Huang's delay in providing access to unit #201 to investigate the leak was unreasonable and made her ceiling damage worse. Ms. Huang denies that there was any delay and argues that if there was any delay, it was due to the strata corporation and the property manager failing to properly notify her.
24. I find there is insufficient evidence to prove that Ms. Huang unreasonably delayed access to unit #201 in November 2018. The caretaker's notes in evidence state only that the tenant in unit #201 did not respond to an attempt to contact him on November 6 and that the tenant did not answer the door on November 7. However, there is no evidence about what attempts the caretaker or property manager made to contact Ms. Huang or her tenant about the reported leak and to arrange an inspection of unit #201 during the month of November. Therefore, I cannot conclude that Ms. Huang is responsible for any delay in arranging the plumbing inspection that ultimately took place on November 29.
25. Further, when a plumber inspected the hallway bathroom in unit #201 on November 29, 2018, he did not identify any leak. There is no evidence that Ms. Huang or her tenant could have known the leak was their responsibility or that it would continue after that date.
26. When the leak resumed on December 15 and 24, 2018, it appears there was a substantial delay until April 3, 2019 before a plumber was able to access unit #201 to investigate and repair the leak. I find that several attempts were made to contact both Ms. Huang and her tenant and the evidence shows that by January 24, 2019, Ms. Huang's tenant was aware of the need for a plumber to access unit #201. However, Ms. Phang brought her claim only against Ms. Huang and I find there is no evidence that Ms. Huang received any of the letters sent to her or was aware of the need to access her unit until March 28, 2019 when she responded to the final notice. Therefore, I find that Ms. Phang has not proven that Ms. Huang is responsible for the delay in providing plumber access to unit #201.

27. Further, even if Ms. Huang was responsible for an unreasonable delay, I find that Ms. Phang has not proven that the delay caused her damage. While I find the photos in evidence establish that her ceiling damage was noticeably worsened between November 4 and November 16, 2018, there is no evidence that the damage increased after January 3, 2019, which is the date of the first letter to Ms. Huang and, therefore, the earliest date that she could have become aware of the leak in unit #201. There are no photos or videos of Ms. Phang's ceiling damage in evidence after December 24, 2018, and no statements or other evidence that would prove the damage worsened due to the delay in fixing the leak between January 3 and April 3, 2019.
28. Therefore, I find that Ms. Huang is not liable under the law of negligence for Ms. Phang's ceiling damage.
29. Unlike the law of negligence, the law of nuisance focuses on the harm suffered rather than the prohibited conduct. A private nuisance occurs when a person substantially and unreasonably interferes with a property owner's use or enjoyment their property. However, if the person is not aware of the problem that causes the interference, and had no reason to know of the problem, they will not be liable because they did not act unreasonably: see *Theberge v. Zittlau*, 2000 BCPC 255.
30. As noted above, I find that Ms. Phang did not prove that Ms. Huang was aware of the leak that caused an interference with Ms. Phang's property before March 28, 2019. Ms. Huang arranged for a plumber to access unit #201 and fixed the leak in less than a week, which I find was reasonable.
31. Further, even if I had found Ms. Huang should have known about the leak after the January 3, 2019 letter, I find that Ms. Phang has not proven a substantial interference to her use and enjoyment of her property after that date. The Supreme Court of Canada has said that a substantial injury to the complainant's property interest is one that amounts to more than a slight annoyance or trifling interference: see *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13. There is no evidence that the leak continued to drip water into Ms. Phang's bathroom or that the

damage worsened after January 3, 2019. While it was reasonable for Ms. Phang to wait until the leak was repaired before repairing her damaged ceiling, I find that having a stained bathroom ceiling for 3 months does not constitute a substantial interference or one that amounted to more than a slight annoyance.

32. Therefore, I find that Ms. Phang has not proven Ms. Huang is liable for her hallway bathroom ceiling damage under the law of nuisance, and I dismiss Ms. Phang's claims on this issue.

***Must Ms. Huang pay for damages to Ms. Phang's ensuite bathroom?***

33. As above, Ms. Phang must prove that Ms. Huang is legally liable in negligence or nuisance for her ensuite bathroom damage.
34. Other than the plumber's invoice that says the toilet in unit #201 was plugged and overflowed, there is no evidence about the cause of the plug or that the tenant or Ms. Huang were aware that the toilet had overflowed. The evidence shows that Ms. Huang's tenant was advised almost immediately about the overflowing toilet in the ensuite and there is no evidence that the leak persisted beyond the date it was discovered.
35. In the absence of any evidence that Ms. Huang or her tenant breached the standard of how an ordinary, reasonable, and prudent person would act in the circumstances, I find Ms. Huang was not negligent. Further, I find that Ms. Phang has not proven that Ms. Huang was aware of the problem that caused the leak and damage to Ms. Phang's ensuite bathroom ceiling.
36. Therefore, I find Ms. Huang is not responsible for repairing Ms. Phang's ensuite ceiling water damage under the law of negligence or nuisance.
37. I dismiss Ms. Phang's claims for damage to her ensuite bathroom ceiling.



## **CRT FEES AND EXPENSES**

38. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Because Ms. Phang was unsuccessful in her claims, she is not entitled to reimbursement of her CRT fees. There was no claim for expenses.

## **ORDER**

39. I dismiss Ms. Phang's claims and this dispute.

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Kristin Gardner, Tribunal Member