

# Strata Property Decisions

Duan v. Guan

Collection: Strata Property Decisions

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File: ST-2019-011019

Type: Strata

Civil Resolution Tribunal

Indexed as: *Duan v. Guan*, 2020 BCCRT 749

**BETWEEN:**

LI PING DUAN

**APPLICANT**

**AND:**

XIU FENG GUAN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This dispute is about a water leak in a strata corporation.
2. The applicant, Li Ping Duan, own a strata lot (unit #105) in a strata corporation. The respondent, Xiu Feng Guan , owns the strata lot above hers (unit #205). Ms. Duan says that water escaped from unit #205 on September 4, 2018 resulting in damage to her strata lot. Ms. Duan says that Ms. Guan refused to accept responsibility for the leak and asks that Ms. Guan reimburse the \$1,150 Ms. Duan paid to repair the damage. Ms. Duan represents herself.
3. Ms. Guan says that Ms. Duan has not provided enough evidence to prove her claim for damages. Ms. Guan 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 tribunal'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.

## **ISSUE**

9. Must Ms. Guan pay damages arising from the water leak, and if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil dispute such as this, the applicant must prove her claim on a balance of probabilities. I have reviewed all of the evidence provided but refer only to evidence I find relevant to provide context to my decision.
11. It is undisputed that water entered into Ms. Duan's strata lot on September 4, 2018. Ms. Duan states that this happened because a toilet supply line burst in Ms. Guan's strata lot. Ms. Guan does not dispute this. Ms. Guan's son arrived home within 15 to 30 minutes and turned off the water. The September 18, 2018 strata council minutes state that a broken toilet supply line in Ms. Guan's strata lot caused water to leak into Ms. Duan's strata lot.
12. The minutes state that this is an "uninsured claim" because the damage was below the strata's \$10,000.00 deductible. The minutes also indicate that Ms. Guan replaced the broken supply line and that Ms. Duan was repairing the damage to her strata lot. Ms. Duan does not argue she has a claim against the strata corporation. Ms. Duan says that Ms. Guan is responsible for the leak because it came from her strata lot.
13. Reviewing the bylaws, there is no bylaw which makes owners responsible for water escaping their strata lot. Therefore, although not specifically framed as such, I find that Ms. Duan's claim is one of nuisance or negligence in common law. I requested the parties make submissions on negligence and nuisance and have considered their submissions in my decision.

***Is Ms. Guan liable in nuisance or negligence for the water damage?***

14. To prove negligence, the applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant sustained damage, and the damage was caused by the respondent's breach. I find the respondent owed the applicant a duty of care as both parties are strata lot owners in the same strata.
15. 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's supply line leaked does not automatically mean that Ms. Guan was negligent. There must still be some evidence that Ms. Guan's actions or inaction fell below a reasonable standard of care and caused the loss.
16. Unlike the law of negligence, the law of nuisance focuses on the harm suffered rather than the prohibited conduct. Nuisance is defined as unreasonable interference with the use of land. In a decision from this tribunal, *Zale et al v. Hodgins*, 2019 BCCRT 466, the tribunal member noted that a private nuisance occurs when a person unreasonably interferes with the use or enjoyment of another person's 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 if they did not act unreasonably. Although not binding on me, I agree with the tribunal member's analysis and findings in *Zale*.
17. Ms. Duan says that when she first spoke to Ms. Guan about the damage, Ms. Guan said that she thought it was the strata's responsibility to repair. Ms. Duan suggests that because the water came from Ms. Guan's strata lot that she is automatically responsible and compares it to being rear-ended

in a motor vehicle crash. Ms. Guan's evidence is that the building is old and that things are breaking. There is no suggestion that Ms. Guan knew there was a problem with the toilet supply pipe, and Ms. Duan does not suggest that she did.

18. Further, the evidence shows that the water was turned off as soon as Ms. Guan's son learned of the issue. I find the facts in this dispute do not indicate that Ms. Guan is liable under the law of negligence or nuisance. The evidence does not show that there was any sign in Ms. Guan's bathroom that water was leaking from the toilet or that Ms. Guan created the nuisance. I find that the toilet supply line was worn away over time, but the evidence does not indicate that Ms. Guan ought to have known or even suspected this. Ms. Guan says that the building is old and in need of repair but there is no indication that she should have known that the toilet supply line might break or was in need of attention. The evidence also establishes that the water leak was fixed as soon as Ms. Guan became aware of it. Therefore, there is no evidence that Ms. Guan contributed further to the leak once it was discovered.
19. I find Ms. Guan is not responsible for repairing any of Ms. Duan's water damage under the law of negligence or nuisance. I dismiss Ms. Duan's claims.

## **TRIBUNAL FEES AND EXPENSES**

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

## **ORDER**

21. I dismiss Ms. Duan's claims and this dispute.

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Kathleen Mell, Tribunal Member