Citation: *Drozd v. Norquay*, 2024 YKSM 2

Date: 20240809
Docket: 23-S0033
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Chisholm

BRANDON DROZD

Plaintiff

v.

RYAN NORQUAY and
RYAN NORQUAY, LITIGATION GUARDIAN
OF DEFENDANT ASHLAN NORQUAY

Defendants

Appearances:
Brandon Drozd — Appearing on his own behalf
Ryan Norquay — Appearing on behalf of the Defendants

REASONS FOR JUDGMENT

[1] The Plaintiff, Brandon Drozd, commenced an action against Ryan Norquay and his teenage son, Ashlan, regarding events alleged to have occurred in early May 2023, when Mr. Drozd was renting a room in Mr. Norquay's home. He seeks damages for an alleged breach of his right to quiet enjoyment, mental distress, rent abatement, moving expenses, a day of missed work, property damage, and court costs. The amount claimed totals $3,607.02.

[2] Although it is conceded that in May 2023 the relationship between Ashlan and Mr. Drozd was difficult, the Defendants dispute Mr. Drozd's claims for damages and seek dismissal of this case. The Defendants contend that Mr. Drozd has not met his

burden of proof due to inconsistencies and gaps in the evidence. In terms of the alleged mental distress, the timing of it is questioned. If, indeed, any mental distress was suffered, the Defendants question the severity of such distress.

[3] This Claim does not fall under the jurisdiction of the *Residential Landlord and Tenant Act,* SY 2012, c. 20, (the "*Act*"). The *Act* sets out specific circumstances under which it will not apply, including s. 3(c) which provides that the *Act* does not apply to, as in this case, "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation".

Summary of the Relevant Evidence

Brandon Drozd

[4] The Plaintiff testified that he moved into Mr. Norquay's residence towards the end of September 2022. He had his own room, access to a shared kitchen, living room and laundry facilities. He also shared the downstairs bathroom with Mr. Norquay's son, Ashlan.

[5] Mr. Drozd had a verbal agreement with Mr. Norquay that he would pay him $700 per month, including utilities. Mr. Drozd testified that, overall, the rental arrangement had been fine until the spring of 2023. He indicated that Ashlan began staying in the residence full-time in the middle of April 2023. He testified that, although he had some minor annoyances with Ashlan, it was not until the beginning of May 2023 that things escalated.

[6] In the first two days of that month, Mr. Drozd testified that he believed Ashlan "dumped" water into his work shoes. He notified Mr. Norquay by text about these occurrences. Mr. Norquay later told Mr. Drozd that he had talked to Ashlan who denied doing this.

[7] Mr. Drozd indicated in his testimony that, on May 3, 2023, nothing untoward occurred until he went to bed and noted a large, wet spot on the bed. He notified Mr. Norquay of this late at night telling him this was unacceptable and had to be rectified. According to Mr. Drozd, Mr. Norquay replied that he should put a towel over the wet spot.

[8] Mr. Drozd felt that his belongings were not safe in the house, so he began to remove his items from the common areas of the house.

[9] Mr. Drozd testified that he again spoke with Mr. Norquay the following day. He presented Mr. Norquay with a long list of small grievances and requested that a lock be installed on his bedroom door. Mr. Norquay gave him a lock and told him to install it himself. That evening, Mr. Norquay advised Mr. Drozd that Ashlan wanted to apologize for his actions. Mr. Drozd testified that Ashlan told him he had some grievances with him, and said effectively that he was sorry, but that he felt Mr. Drozd deserved it. Mr. Drozd told him to stop "messing" with his belongings to which Ashlan replied he would.

[10] On May 5, 2023, Mr. Norquay questioned whether Mr. Drozd had sabotaged Ashlan`s expensive soaps, which Mr. Drozd denied having done. The same day, Mr. Drozd testified that he had left a pan of chicken fingers on the counter which

disappeared. Mr. Drozd subsequently observed vomit on the floor, suggesting to him that the chicken fingers may have been fed to the Defendants' dog. Mr. Drozd indicated in a text message to Mr. Norquay that he thought it would be better if he moved out before the earlier agreed upon mid-June time frame.

[11] Mr. Drozd testified that he, Mr. Norquay, and Ashlan had an in-person conversation to try to solve the issues. Mr. Drozd testified that during this conversation, he asked them where a shower head that he owned and had brought to the house had been placed. This led to Ashlan making a hurtful comment with respect to Mr. Drozd's appearance. Ashlan taunted Mr. Drozd to come after him. Mr. Drozd testified that as he was feeling anxious and stressed, he hollered at Ashlan in response. Mr. Norquay stated that he would have to call the police, and subsequently threatened Mr. Drozd with eviction. Mr. Drozd testified that he continued to worry about the safety of his belongings.

[12] Mr. Drozd testified that, in the early morning hours of May 6, 2023, unable to sleep, he sent a long text message indicating that he had experienced stress, anxiety, and depression his whole life, and although he had been managing it well, the recent incidents had caused him significant anxiety, and even led to him having suicidal thoughts for the first time in a long while. He testified that he did not feel that the house was a safe place.

[13] Later that day, Mr. Drozd and Mr. Norquay met about the situation. Mr. Drozd testified that the meeting started well, but that Mr. Norquay was unable to understand

Mr. Drozd's stress. Mr. Norquay replied that he and Ashlan were also dealing with stress.

[14] When speaking about Mr. Drozd's problems with Ashlan, Mr. Norquay said "what can I do - nothing; nothing is going to happen". Mr. Drozd testified that he realized at that point that the situation would not improve, and that he had to leave the house permanently.

[15] Mr. Drozd testified that he knew that Mr. Norquay and Ashlan were going to be out of the house that day. Mr. Drozd discovered when he went to take a shower that the original shower head had been removed from the bathroom he used, and he was unable to shower. He later decided to leave the house to play a round of disc golf. When approaching his car, he noticed that there was a nail in one of the tires, and wondered whether this was something that Ashlan had done. He sent a text message to Mr. Norquay to this effect.

[16] In his testimony, Mr. Drozd described the physical signs of the anxiety and stress that he was suffering at this point. He referred to his teeth chattering and his body shaking, which he believed was the result of post-traumatic stress syndrome. He described having no appetite for approximately 48 hours because of his emotional and physical state. He also submitted a video of himself, recorded at this time, which he says depicts the negative physical effects he was enduring.

[17] Mr. Drozd also submitted a doctor's note dated July 14, 2023, which outlines his reported anxiety and depression from the beginning of May to June 21, 2023, when he moved back to Winnipeg. He did not discuss this timeframe in his testimony. The note

also indicates that Mr. Drozd has been managed for his mental health in the past, and that he was prescribed medication in 2018 for that reason.

[18] Mr. Drozd located another place to live on May 7, 2023. He moved in the same day. He testified that it took six hours to pack, transport, and unpack his belongings. He submitted to the Court a moving company estimate of $652 for a move of this nature.

Ryan Norquay

[19] Mr. Norquay testified that Mr. Drozd's evidence was, for the most part, fair. However, he did dispute the suggestion that he had threatened Mr. Drozd with eviction. Mr. Norquay explained that in the spring of 2023, Ashlan was not doing well in school and was often in the principal's office. Mr. Norquay was experiencing difficulties with Ashlan but was attempting to get things back on track.

[20] Mr. Norquay testified that he was unaware that Ashlan and Mr. Drozd were having difficulties prior to May 2023. If he had known about the issues, he would have made efforts to resolve them. He explained that he, at times, did not handle things well and reacted abrasively to Mr. Drozd. Mr. Norquay also testified that, in early May 2023, he was quite ill with COVID-19, including a fever and vomiting. The illness negatively impacted his ability to respond immediately to Mr. Drozd's complaints.

[21] Mr. Norquay testified that he was unaware that Mr. Drozd had suffered from mental health issues in the past. He indicated that, if he had known about these past issues, he would have made efforts to assist Mr. Drozd in May 2023.

Claims of the Plaintiff

[22] As set out in the Claim, Mr. Drozd seeks:

- $2000 for mental distress and breach of quiet enjoyment;
- $700 for the rent he paid to Ryan Norquay in May 2023;
- $652 for moving expenses;
- $155.02 for missing a day of work when he feared that Ashlan would destroy belongings in his room;
- $50 for damage to his shoes;
- $50 of court costs; and
- interest (pre-judgment interest from June 2, 2023, and post-judgment interest).

[23] Mr. Drozd has the burden of proving his claim on the balance of probabilities.

Analysis

[24] Mr. Norquay and Mr. Drozd entered into an oral contract consisting of the latter making monthly payments to rent a room, share the downstairs bathroom, and to have access to common areas of the house, such as the kitchen and the living room.

Claim for Mental Distress/Mental Injury

[25] Mr. Drozd's claim for mental distress is against both Ryan Norquay and his son, Ashlan. Ashlan Norquay is 15 years of age.

[26] First, in terms of potential liability of Ashlan Norquay, the law is clear that in certain circumstances a child may be civilly liable for intentional torts.

[27] In ***W.E.*** v. ***F.E.***, 2008 YKSC 40, Justice Richard set out the law in terms of civil liability of children. At para. 38, he wrote:

> …It is clear that a 13 year old child can commit an intentional tort. It is not the age of the child that matters, but rather the capacity of the child to understand and appreciate, and whether the child acted intentionally. … (see also ***T.O.*** v. ***J.H.O.***, 2006 BCSC 560, at paras. 20-21).

[28] In this matter, I accept on the evidence before me that Ashlan Norquay had the capacity to form the specific intent required to commit the tort in question.

[29] The plaintiff claims damages for mental distress or injury due to incidents in early May 2023. In order to be successful in a negligence claim, a plaintiff must demonstrate:

> (1) that the defendant owed him a duty of care;
>
> (2) that the defendant's behaviour breached the standard of care;
>
> (3) that the plaintiff sustained damage; and
>
> (4) that the damage was caused, in fact and in law, by the defendant's breach.
>
> [***Mustapha*** v. ***Culligan of Canada Ltd.***, 2008 SCC 27, at para. 3]

Duty of Care

[30] In this case, Ryan Norquay, as landlord and as roommate, owed Mr. Drozd a duty of care to not injure Mr. Drozd, either physically or psychologically. The same holds true for Ashlan Norquay. Additionally, as a parent, Ryan Norquay may be held liable if it is demonstrated that he failed to supervise his son (***Dewing*** v. ***Kostiuk***, 2017 MBCA 22, at para. 37; ***Segstro*** v. ***McLean*** [1990] B.C.J. No. 2477). However, it should be noted that this parental duty of care becomes less demanding of the parent as the child grows older. In ***Lelarge*** v. ***Blakney*** (1978), 92 D.L.R. (3d) 440 (NBCA), the Court stated, at para. 13:

> The parental duty of care is a duty personally imposed upon the parent irrespective of the wrongdoing or the liability of a child. The duty is to supervise and control the activities of the child and in doing so to use reasonable care to prevent foreseeable damage to others. The extent of the duty varies with the age of the child. The degree of supervision and control required of a young child may be very different from that required of a child approaching the age of majority. As the age of the child increases and the expectation that he will conform to adult standards of behaviour also increases, the parental duty to supervise and control his activities tends to diminish. …

Nonetheless, in the circumstances of this case, based on the information provided to him by Mr. Drozd, I find that Mr. Norquay, as a parent, had a duty of care to Mr. Drozd.

Standard of Care

[31] The second question is whether Ashan and/or Mr. Norquay breached the standard of care. One manner of determining whether a defendant breached the standard of care is to consider whether their conduct created an unreasonable risk of harm (***Mustapha***, para. 7). As stated in ***Hill*** v. ***Hamilton-Wentworth Regional Police***

Services Board, 2007 SCC 41, at para. 69, "…the general rule is that the standard of care in negligence is that of the reasonable person in similar circumstance. …". I find that the actions of Ashlan Norquay breached the standard of care of a reasonable person in circumstances of this nature.

[32] In terms of Mr. Norquay, as a parent, even though Ashlan was having behavioural challenges at school, he did not have a specific propensity to act in a destructive manner.

[33] In ***Segstro***, at para. 72, the Court explained that "[liability will be found where a parent is held to have directed, sanctioned, ratified, consented to, or participated in the torts of a child since by so doing the parent becomes a party…". If, however, the child has a specific propensity to act destructively, "…the standard of care expected of a parent may be elevated…" (para. 73).

[34] I find that Mr. Norquay did not breach the standard of care as a parent. He knew that his son was having trouble at school in the spring of 2023, however, he had no information, or, even suspicions, before May 2023 that there were any difficulties between his son and the Plaintiff.

[35] I find that Mr. Norquay did not "sanction" or "consent to" the actions of Ashlan towards Mr. Drozd.

[36] At the same time, however, as landlord, Mr. Norquay had a duty not to create an unreasonable risk of harm for his tenant. On May 6, 2023, Mr. Norquay essentially told Mr. Drozd that he was unable to control Ashlan in terms of his actions toward Mr. Drozd.

In so doing, he clearly indicated that he would not institute adequate measures to prevent Ashlan from continuing his improper conduct towards Mr. Drozd. I find that Mr. Norquay, as landlord, create an unreasonable risk of harm in this situation.

[37] Therefore, Mr. Norquay, as landlord, breached the standard of care.

Did the Plaintiff sustain damage?

[38] The Court in ***Mustapha*** explained that "psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset" (para. 9). Compensable injury "…must be serious and prolonged…" and exceed "…ordinary annoyances, anxieties and fears…" (***Mustapha***, para. 9) (emphasis added). In ***Mustapha***, the plaintiff developed a major depressive disorder that was "debilitating" and which "had a significant impact on his life" (para. 10). However, the Court in ***Saadati*** v. ***Moorhead***, 2017 SCC 28, at para. 19, cautioned that "…not all mental disturbances will amount to true "damage" qualifying as mental injury, which is "serious and prolonged" and rises above the ordinary emotional disturbances that will occasionally afflict any member of civil society without violating his or her right to be free of negligently caused mental injury…".

[39] In the matter before me, Mr. Drozd described suffering negative effects, such as significant anxiety, stress, loss of appetite, and even suicidal thoughts. In his testimony, he explained that the loss of appetite resolved within approximately 48 hours. Although his doctor's note mentions Mr. Drozd's anxiety and depression having lasted from the beginning of May 2023 to June 21, 2023, Mr. Drozd did not address this timeframe in his testimony. On balance, I conclude that these negative mental health effects were

not prolonged. I, therefore, conclude that Mr. Drozd did not suffer damage qualifying as mental injury (see ***Saadati***, at para. 19).

[40] However, if I am in error regarding whether Mr. Drozd sustained damage, I will consider the fourth question to be addressed in a negligence claim.

Was the Plaintiff's damage caused by the Defendants' breach in fact and in law?

[41] If I were to accept, in fact, that the Defendants' breach caused damage to Mr. Drozd, I must also consider in law whether it was too remote to justify recovery. The Ontario Court of Appeal in ***Palmer*** v. ***Teva Canada Limited***, 2024 ONCA 220, at para. 60, recently stated in this regard:

> Second, not all mental injury will necessarily be caused, in fact or in law, by the defendant's negligent conduct. Even where a plaintiff's claim establishes a duty of care, breach of the duty, damage and factual causation, the plaintiff must still address legal causation. Legal causation is an inquiry into remoteness or foreseeability of the injury. This threshold question asks "whether the occurrence of mental harm in a person of ordinary fortitude was the reasonably foreseeable result of the defendant's negligent conduct": *Saadati*, at para. 20; *Mustapha*, at paras. 14-16.

[42] In other words, the issue to be determined is whether the plaintiff's damages were reasonably foreseeable or too remote. Mr. Drozd has the onus of proof. In ***Mustapha***, the plaintiff suffered psychiatric injuries from having observed dead flies in a container of drinking water supplied by the defendant. However, he could not recover for these injuries since they would not have occurred in a person of ordinary fortitude. As explained in ***Mustapha*** at para. 16:

> To say this is not to marginalize or penalize those particularly vulnerable to mental injury. It is merely to confirm that the law of tort imposes an obligation to compensate for any harm done on the basis

> of *reasonable* foresight, not as insurance. The law of negligence seeks to impose a result that is fair to both plaintiffs and defendants, and that is socially useful. In this quest, it draws the line for compensability of damage, not at perfection, but at reasonable foreseeability. … As stated in *White*, at p. 1512, focusing on the person of ordinary fortitude for the purposes of determining foreseeability "is not to be confused with the 'eggshell skull' situation, where as a result of a breach of duty the damage inflicted proves to be more serious than expected". Rather, it is a threshold test for establishing compensability of damage at law.

[43] It must be remembered that "…unusual or extreme reactions to events caused by negligence are imaginable but not reasonably foreseeable" (***Mustapha***, at para. 15)[1].

[44] In this matter, the question is, therefore, whether Mr. Drozd's reaction was a reasonably foreseeable consequence following what occurred in early May 2023, including: having water put in his shoes on two occasions and on his bed on one occasion, having to deal with a missing shower head, the loss of a meal of chicken fingers, as well as being described in unflattering terms on one occasion. Mr. Drozd has not placed any information before me that a person of "ordinary fortitude" would have reacted in the highly sensitive manner that he did. As a result, his claim for damages for mental distress must fail.

Breach of Quiet Enjoyment

[45] Mr. Drozd alleges a breach of his right to quiet enjoyment while residing in Mr. Norquay's home in early May 2023. In terms of the breach, he relies on the two

[1] See also ***Capelet v. Brookfield Homes (Ontario) Limited***, 2018 ONCA 742 (confirming 2017 ONSC 7283) where the motions judge concluded that the appellant's claims for emotional injury due to the presence of mould was not a reasonably foreseeable consequence of faulty home construction by the respondent and were therefore not recoverable as a matter of law. As concluded by the motion's judge on the evidence, the appellant's reaction to the mould was "highly unusual and the product of particular sensitivities on his part".

separate incidents in which water was placed in his shoes, and water thrown on his bed. Additionally, he refers to the disappearance of chicken fingers from the kitchen counter. Finally, he points to the removal of a shower head from the bathroom he shared with Ashlan on May 6, 2023, rendering the shower unusable.

[46] In the decision of ***Heckert*** v. ***5470 Investments Ltd.***, 2008 BCSC 1298, the Court examined the right to quiet enjoyment. The Court stated at para. 99:

> The right to "quiet enjoyment" is defined at common law to be the right to use the premises for all of the usual purposes incidental to occupation. A breach of quiet enjoyment requires proof of an interference with the use and enjoyment of the rented or leased premises. The interference must be substantial. …

[47] Some jurisprudence indicates that the breach must not only be substantial, but of a permanent nature "…such that it constitutes a serious interference with the ability of the tenant to exercise its right of possession" (***Evergreen Building Ltd.*** v. ***IBI Leaseholds Ltd.***, 2008 BCSC 235, at para. 55).

[48] However, in ***Pellatt*** v. ***Monarch Investments Ltd.***, [1981] O.J. No. 2258 (Ont. Co. Ct.), the plaintiff student was interrupted in her studies by renovations carried out in the apartment building where she was renting. She was unable to study in her apartment due to excessive noise from machinery and inconvenienced by dust that entered her residence. There was also unauthorized entry into her apartment by workers which resulted in damage. At times, during a five-day period she was without drinking water or plumbing facilities. Finally, for three days, a tar machine created noise and emitted an obnoxious pungent odor. Borins, Co. Ct. J., as he then was, canvassed

the history of the covenant for quiet enjoyment. He referred to the decision in ***McCall*** v. ***Abelesz***, [1976] Q.B. 585 where Lord Denning stated at 594:

> This covenant is not confined to direct physical interference by the landlord. It extends to any conduct of the landlord or his agents which interferes with the tenant's freedom of action in exercising his rights as a tenant . . . It covers, therefore, any acts calculated to interfere with the place or comfort of the tenant, or his family.

[49] Ultimately, Borins J. found that the noise, odours and mess "constituted an invasion of the tenant's right to 'peace and comfort'… of her apartment" (para. 29). He held that there had been a breach of the covenant of quiet enjoyment, and awarded an abatement of rent, pursuant to the *Landlord and Tenant Act*.

[50] The decision of ***Sundberg*** *v.* ***J.E.D. Holdings Ltd.***, [1984] B.C.J. No. 183; 1984 CarswellBC 695 (BCSC) provides that a breach of the covenant of quiet enjoyment does not require that the conduct complained of originate with the landlord. The covenant can be breached if the conduct originates from someone within the landlord's control.

[51] Similarly, there are cases in the residential tenancy domain where a landlord has been held liable even though the conduct complained of is not of the landlord's doing. I note that residential tenancy legislation commonly stipulates that a tenant has the right to reasonable enjoyment of their rental unit. The decision of ***Hassan*** v. ***Niagara Housing Authority***, 2000 O.J. No. 5650; 2001 CarswellOnt 4890 (ONSC), was an appeal from the decision of the Ontario Rental Housing Tribunal. It involved a tenant and his family suffering repeated harassment by neighbouring tenant's children, which included verbal and physical abuse and damage to tenant's property. The Tribunal

dismissed the tenant's claim, saying that the landlord was not responsible for the actions of the other tenant. The Ontario Supreme Court disagreed. At para. 21, the Court held that in light of the harassment the tenant was subjected to in this case, the landlord was under an obligation to act quickly, that is within weeks, not months or years to effectively correct the substantial interference of the plaintiff tenant's reasonable enjoyment of his premises caused by the acts of the children of his neighbouring tenant. The Court awarded the tenant a reduction of the rent paid for a five-month period.

[52] In ***Mejia*** v. ***Cargini***, 2007 CanLII 2801 (Ont. Sup. Crt. of Jus.), another case falling under residential legislation, the Ontario Rental housing Tribunal found that friends of the landlord assaulted Mr. Mejia, the tenant, in front of his family, and that the landlord did nothing to prevent the assault. The tribunal also found that the purpose of the assault was to put pressure upon the tenant to vacate the premises. The tenant sought damages pursuant to his rental contract, arising out of the breach of his right to quiet enjoyment of his apartment. The tribunal dismissed a claim for damages, however, the Superior Court held that in addition to an abatement of rental and moving expenses, a $4,000 award for the breach of tenant's contractual right to quiet enjoyment was warranted. The Court described the case as an "outrageous breach of the rental agreement".

[53] As mentioned at the outset, the residential tenancy legislation in this jurisdiction is not applicable to the matter before me. The case falls under the common law. After consideration, I am satisfied that, although on the lower end of the scale, there was a breach of Mr. Drozd's right to quiet enjoyment. I take into account the fact that Ashlan's

intentional actions were repetitive and included his entering Mr. Drozd's bedroom. As a result, Mr. Drozd had concerns about damage to other personal items, such as his computer. On May 6, 2023, Mr. Norquay effectively indicated to Mr. Drozd that nothing was going to change. In other words, he expressed the view that he could not control Ashlan. Indeed, later that day, Mr. Drozd discovered that the showerhead in the bathroom he shared with Ashlan had been removed, rendering it unusable. Mr. Drozd's decision to vacate the premises was not unreasonable in all the circumstances. I find that Mr. Drozd was deprived as a result of his right to quiet enjoyment and, accordingly, is entitled to an award of $700 (the equivalent of one month's rent), plus moving expenses. I have calculated the proper amount for moving expenses to be $150, substantially below the amount claimed. I note that Mr. Drozd's move consisted of gathering his personal belongings and taking them to his new residence. There were no heavy items, such as, for example, kitchen appliances. The $150 award is based on six hours of work at the rate of $25 an hour, a reasonable hourly amount for the work done.

[54] Mr. Drozd also seeks an award for a day he missed work. However, he works for the Yukon Government whose benefits include paid sick leave. I understood that he took a sick day in early May 2023 because he was concerned about the safety of his personal belongings. Accordingly, there is no evidence before me that he was out of pocket any money for missing work. His claim in this regard fails.

[55] I award Mr. Drozd $50 for the damage Ashlan caused to his shoes.

Conclusion

[56] In conclusion, Mr. Norquay is liable to the Plaintiff for breaching his right to quiet enjoyment. I award the Plaintiff $700 for the breach of quiet enjoyment and $150 in moving expenses. Ashlan is liable to Mr. Drozd for $50 for damage to property. Therefore, in total, the Plaintiff shall have judgment in the amount of $900. Pre-judgment interest (from June 2, 2023), and post-judgment interest are payable on this amount in accordance with the *Judicature Act*, RSY 2002, c. 128.

[57] I award costs to the Plaintiff in the amount of $50.

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CHISHOLM T.C.J.