

SUPREME COURT OF NOVA SCOTIA
Citation: Cooper v. Wournell, 2022 NSSC 307

Date: 20221101
Docket: Hfx No. 481106
Registry: Halifax

Between:

Ryan Cooper

Applicant

v.

Cale Domenic Wournell

Respondent

<p>Decision</p>

Judge: The Honourable Justice C. Richard Coughlan

**Last Written
Submission:** September 1, 2022

Counsel: Mr. Ian Roderick Dunbar, for the Applicant
Mr. Cale Domenic Wournell, Self-Represented Respondent

By the Court:

[1] In a decision delivered March 1, 2019 I found Cale Domenic Wournell committed a nuisance against Ryan Cooper. I granted a mandatory injunction directing Mr. Wournell carry out all necessary work at his real property to remedy the rat infestation of the property. I also ordered if Mr. Wournell failed to take the necessary steps to abate the nuisance Mr. Cooper was entitled to carry out the necessary work. In a decision delivered March 12, 2019, I gave further directions concerning any abatement to be conducted by Mr. Cooper and reserved the issue of costs. There were further appearances on August 13, 2019 and August 20, 2019. Orders were issued on March 14, 2019 and September 25, 2019.

[2] The September 25, 2019 order provided in part:

[7] The Respondent shall indemnify the Applicant for the amounts paid to Skedaddle and to the Sheriff pursuant to this Order (the “Indemnity”). The amount of the Indemnity shall be fixed by this Honourable Court by further Order.

[8] Once the Work is complete, the Applicant shall be entitled to file written submissions with the Court regarding the amount of the Indemnity, and the costs of this Application in Court. The Respondent shall be entitled to thirty (30) days to file written submissions, if any, in response to those submissions.

[9] A copy of this order, and any written submissions on Indemnity and costs, may be served on the Respondent electronically at [...] which he has used to communicate with the Court in these proceedings.

[3] By letter dated April 27, 2022 Mr. Cooper’s counsel wrote to the Court seeking determination of the amount of the indemnity to which Mr. Cooper is entitled, costs and disbursements. Further submissions were filed, the last on September 1, 2022. Mr. Wournell has not filed any submissions concerning the amount of the indemnity, costs or disbursements.

[4] The following is a brief summary of the facts of this application.

[5] Mr. Cooper and Mr. Wournell owned homes in a row of six three-level homes in a shared townhouse complex. The properties shared a roof, a common interior wall, a continuous front extension wall and a continuous rear exterior wall.

[6] In December 2017 Mr. Cooper discovered there were rats in the ceiling of his unit. The construction of the townhouse complex was such that rodents could travel freely between all the units in the complex. To secure any individual home from a rat infestation it was necessary to carry out an exclusion procedure on every home in the entire townhouse complex.

[7] In March 2018 Mr. Cooper and his wife informed Mr. Wournell of the rat problem and asked if he would cooperate with other homeowners to resolve the issue. Mr. Cooper told Mr. Wournell he would pay the cost of the work on Mr. Wournell's unit if necessary. Mr. Cooper did not hear from Mr. Wournell and spoke to him again on May 2, 2018. Mr. Cooper sent an email to homeowners in the complex about scheduling the work stating he would pay the cost of the work if necessary. Mr. Cooper spoke to Mr. Wournell on May 30, 2018 and emailed him on August 4, 2018 and again on August 21, 2018. There was also correspondence between Mr. Cooper's counsel and Mr. Wournell.

[8] Mr. Cooper commenced the Application in Court on October 5, 2018. Although served with the Application in Court Mr. Wournell did not file a Notice of Contest. Mr. Wournell did not attend the motion for directions. Of the numerous court appearances the only appearance Mr. Wournell attended was on April 29, 2019 in response to the order of March 14, 2019. I inquired of Mr. Wournell if he intended to hire a company to perform the ordered work. He said no. Mr. Cooper's counsel had no further comment. Mr. Wournell was encouraged to seek legal advice concerning costs.

Indemnity:

[9] Mr. Wournell was ordered to indemnify Mr. Cooper for the amounts Mr. Cooper paid to Skedaddle Humane Wildlife Control. The evidence shows the amount Mr. Cooper paid to Skedaddle was \$743.71 including HST. Mr. Wournell will pay Mr. Cooper \$743.71 being the amount Mr. Cooper paid to Skedaddle Humane Wildlife Control.

Costs:

[10] The following principles are set out in the Civil Procedure Rules: In determining appropriate costs in a proceeding the Court is to "do justice between the parties" (Rule 77.02(1)). Costs of a proceeding follow the result, unless, a Judge orders or a Rule provides otherwise (Rule 77.03(3)). Unless a Judge orders

otherwise party and party costs are fixed according to the tariffs reproduced at the end of Rule 77 (Rule 77.06(1)). The tariff amount may be increased or decreased Rule 77.07(1). Rule 77.07(2) sets out examples of factors which may be relevant in determining whether the tariff costs should be increased or decreased. A Judge may order lump sum costs instead of tariff costs (Rule 77.08). An award of party and party costs includes necessary and reasonable disbursements pertaining to the subject of the award (Rule 77.10 (1)).

[11] Costs in connection with an application in court is governed by Tariff A (Rule 77.06(2)). The “amount involved” in this proceeding is less than \$25,000. The basic scale for an “amount involved” of less than \$25,000 is \$4,000.

[12] This proceeding required seven court appearances: (1) November 7, 2018 – Motion for Directions; (2) February 20, 2019 scheduled hearing but Mr. Wournell not properly served (service affected by a party: Mr. Cooper); (3) March 1, 2019 hearing; (4) March 12, 2019 – Review of order at the Court’s request; (5) April 29, 2019 – hearing requested by Mr. Wournell; (6) August 13, 2019 – Mr. Wournell advised he was not available, hearing adjourned to August 20, 2019; (7) August 20, 2019 – Mr. Wournell did not appear.

[13] Two of the appearances were not caused by any conduct of Mr. Wournell: February 20, 2019 and March 12, 2019. The other appearances were necessitated by Mr. Wournell’s action in not allowing the necessary work to be done to abate the rat infestation even though Mr. Cooper was prepared to pay the cost. The five appearances November 7, 2018; March 1, 2019; April 29, 2019; August 13, 2019 and August 20, 2019 are roughly equivalent to a day and a half of hearing time.

[14] To do justice between the parties and considering all the circumstances of this application including the five appearances November 7, 2018; March 1, 2019; April 29, 2019; August 13, 2019 and August 20, 2019, and the “amount involved”, I find Cale Domenic Wournell is to pay Ryan Cooper his costs of the action in the amount of \$7,000.00.

[15] I am prepared to allow disbursements in the amount of \$778.05.

Conclusion:

[16] In conclusion Mr. Wournell will pay Mr. Cooper costs of \$7,000.00 together with disbursements of \$778.05 and the indemnity of \$743.71 for a total of \$8,521.76.

Coughlan, J.