



Civil Resolution Tribunal

Date Issued: November 7, 2017

File: SC-2017-002907

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lane v. MacDonald*, 2017 BCCRT 109

BETWEEN:

Dillon Lane

APPLICANT

AND:

Jacob MacDonald

RESPONDENT

AND:

Dillon Lane

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The parties were roommates. Around June 16, 2017, the applicant Mr. Lane threatened Mr. Macdonald's property. Mr. MacDonald decided Mr. Lane needed to move out. This dispute is about that decision and the parties' physical fight that followed it. The parties are each self-represented and both claim damages.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are as follows:
 - a. Is Mr. Lane entitled to \$500 pain and suffering damages for assault, as a result of the fight?
 - b. Is Mr. Lane entitled to the return of a \$100.00 utilities damage deposit?
 - c. Is Mr. Lane entitled to compensation for a damaged cot, in the amount of \$134.38 or otherwise?
 - d. Is Mr. Lane entitled to reimbursement of a half-month's rent?
 - e. Is Mr. Lane entitled to damages entitled to a half-day of lost wages, totaling \$66.00?
 - f. Is Mr. MacDonald entitled to \$800.00 compensation for his computer that was damaged during the fight?

EVIDENCE AND ANALYSIS

7. An applicant bears the burden of proving the evidence on a balance of probabilities. Here, this means Mr. Lane bears the burden of proof with respect to his assault and damages claims and Mr. MacDonald does for his counterclaim for his damaged computer. That said, while Mr. Lane must prove the assault occurred and prove the injuries he says resulted, Mr. MacDonald bears the burden of establishing any defences, such as consent or defence of himself or his property. Mr. MacDonald also bears the burden of proving that any damage he caused to the cot was not through negligence.

The fight

8. Around June 16, 2017, it is undisputed that Mr. Lane texted Mr. MacDonald to say he was going to start destroying Mr. MacDonald's property, which prompted Mr. MacDonald to leave his work and go home. When Mr. MacDonald got home, the

parties started to argue. Mr. Lane says they verbally argued, Mr. Macdonald demanded that he leave, and then Mr. MacDonald hit him 3 times before Mr. Lane fell. Mr. Lane says that in the process of falling he reached out for support and Mr. Macdonald's computer was "victim" of his fall.

9. In contrast, Mr. MacDonald says that "after a while of confrontation", when Mr. Lane actually made contact with Mr. MacDonald's computer, Mr. MacDonald moved to protect his property and hit Mr. Lane once, and then as Mr. Lane fell he attempted to grab at a variety of things, including Mr. MacDonald's computer. Mr. MacDonald says that his computer was "left tipped" and after Mr. Lane stood up he then completely pushed the computer off the table, causing extensive damage when it fell onto the side of the fireplace and then onto a tile surface. After that, Mr. Macdonald hit Mr. Lane "a couple more times in defense of me and my property".

Mr. Lane's claimed damages for assault

10. Mr. Lane claims \$500 for pain and suffering. First, I note that it is undisputed that Mr. Lane reported an assault to the police who did not pursue the matter because Mr. MacDonald defended his property. Mr. Lane submits that Mr. Macdonald "could have sued for damages to the computer without the assault occurring". That statement, the admitted verbal threats to the computer, and the weight of the evidence overall, supports the following chronology. Mr. Lane threatened Mr. MacDonald's computer both verbally and then physically. Mr. Macdonald moved to defend it and in doing so hit Mr. Lane once, causing Mr. Lane to fall and knock the computer into a "tipped" position. Mr. Lane stood up and then intentionally knocked the computer off the desk causing it to fall against the fireplace and then onto the floor. After that, Mr. MacDonald hit Mr. Lane twice more to prevent further attack from Mr. Lane. On this issue, I prefer Mr. MacDonald's account, which I find more reasonable than Mr. Lane's version that has him only accidentally damaging the very computer he had threatened to damage.

11. People who engage in fights cannot complain of the injuries they suffer unless the force used is excessive or unnecessary (see for example *Petersen v. Stadnyk et al*, 2006 BCSC 806).
12. Mr. Macdonald was not limited to merely warding off an attack. He was permitted to use reasonable force against Mr. Lane to prevent Mr. Lane from causing damage or further damage to his computer. In deciding whether Mr. MacDonald's force was reasonable, I must consider the actual force used and the consequence of that force.
13. After Mr. MacDonald forced Mr. Lane to move out, Mr. Lane says due to difficulties in finding a new residence he was forced to stay in his car, which in turn has caused "large amounts of discomfort as well as pain" to his back, neck, and hips. Mr. Lane was prescribed pain medication and muscle relaxers, and was referred for massage and physiotherapy. However, I find these conditions all relate to Mr. Lane having lived in the cramped condition of his car, rather than from the physical fight itself. Photos appear to show mild abrasions on Mr. Lane's face and mild bruising around his left eye, which I accept occurred during the fight. Given these photos and the evidence I have accepted above about the circumstances of the assault, I find Mr. MacDonald acted reasonably in defence of his property. I dismiss the applicant's claims for pain and suffering damages.

The cot

14. Later, Mr. MacDonald packed up Mr. Lane's heavy-duty cot, and allegedly damaged it in the process. Mr. Lane provided photos indicating a bent frame, submitting that it will cost \$134.38, including tax, to replace the cot. Mr. MacDonald says he had no choice but to pack up the cot that Mr. Lane had left behind for several days, and says that it was completely undamaged when he did so. Other than Mr. Lane's allegations, I have no evidence before me as to the condition of the cot before Mr. MacDonald packed it up, but given Mr. Lane was living on it I find it was undamaged before. However, I am satisfied that Mr. MacDonald, who was what in law is known as an involuntary bailee, did not act unreasonably in

packing up the cot that Mr. Lane had left behind for several days. I find that Mr. MacDonald is not responsible to pay for the cot's damage in the circumstances.

Mr. Lane's remaining damages claims

15. As for the half-month's rent claim, based on the evidence before me I find this claim falls within the jurisdiction of the Residential Tenancy Branch (RTB), under the *Residential Tenancy Act*. I therefore decline to decide this claim. That said, in the event I am wrong about the RTB's jurisdiction, I would find the applicant is not entitled to reimbursement. The applicant and respondent apparently lived in a shared rented space and the evidence and submissions make it clear that quite apart from the physical fight the applicant was at least equally responsible for the deterioration of the relationship that necessitated Mr. Lane's moving out, which at minimum includes threats against Mr. MacDonald's property. Nothing in my comments binds the RTB.
16. As for the \$100.00 claimed damage deposit, I similarly find that on the evidence this claim is within the RTB's jurisdiction. I decline to decide this claim.
17. I dismiss Mr. Lane's claim for a half-day of wages that he says he lost because he could not return to work for the afternoon after the fight. I find Mr. Lane started the verbal confrontation, and it is unclear how long that portion of the argument lasted. I have also found above that Mr. MacDonald acted in self-defence. As also noted above, the limited medical evidence provided relates to back and neck pain that Mr. Lane says he suffered from having to live in his car, and not with respect to any physical injury from the fight itself. I dismiss Mr. Lane's claim for a half-day of wages.

Mr. MacDonald's counterclaim for his damaged computer

18. Mr. MacDonald says his computer was damaged by Mr. Lane during the fight, and values the damage at \$800.00, although he acknowledges he initially valued the damages at \$200.00.

19. Mr. MacDonald says while before the fight his custom-built computer was “glitchy” on booting up, with the passage of time he sees random screen flickers and hardware not functioning properly and he has been unable to solve the problem as hoped. Mr. MacDonald says the case has gouges and scratches whereas before the fight it was in a near-perfect condition. He also says that the damage caused to the cable inside is from the case flexing from falling and hitting things, an explanation I will accept. Mr. MacDonald says the computer case needs total replacement, it has a broken wifi antenna, a “glitchy” graphics card, a broken keyboard, a broken USB cable, and other damages. Mr. Lane disputes the amount of computer damage claimed, saying it could not have all resulted from the fall to the floor.
20. I accept that Mr. MacDonald’s computer was damaged by Mr. Lane, given some of the photos submitted and the evidence I have accepted above. I however cannot conclude that Mr. MacDonald has proved the computer was damaged to the extent of the \$800 claimed. There is limited evidence before me in terms of invoices for repairs or replacement parts for the computer’s case, keyboard, and cables, which total about \$300.00. I find \$300.00 the reasonable amount to award the respondent for his damaged computer.
21. In accordance with section 49 of the Act and the tribunal’s rules, I find the respondent was partially successful in his counterclaim and is therefore entitled to reimbursement of \$37.50, half the \$75 he paid in tribunal fees. There are no claimed dispute-related expenses.

ORDERS

22. I order that:
 - a. The applicant Mr. Lane’s dispute is dismissed, save for his claims for the return of a half-month’s rent and for a utilities deposit, which I have not decided because I find they are outside the tribunal’s jurisdiction and are instead within the RTB’s jurisdiction.

- b. Within 30 days, Mr. Lane must pay Mr. MacDonald \$337.50, comprised of \$300 for the computer damages and \$37.50 in tribunal fees.
23. Mr. MacDonald is entitled to post-judgment interest under the *Court Order Interest Act*.
24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair