



Civil Resolution Tribunal

Date Issued: June 29, 2018

File: SC-2017-006116

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *LINDGRIN v. Martin*, 2018 BCCRT 297

B E T W E E N :

KAREN LINDGRIN

APPLICANT

A N D :

Rudy Martin

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant KAREN LINDGRIN was dating the respondent Rudy Martin. The applicant was storing some of her belongings at the respondent's home. When the relationship ended, the respondent did not return some of the applicant's belongings, specifically a winter coat, a carpet cleaner (owned by the applicant's

family) and a pair of skis (unreturned items), and at the time of their break-up claimed to have thrown them out.

2. The respondent never threw out the unreturned items, but told the applicant that because he did not want her to contact him again. The respondent says he returned most of the applicant's belongings. He has the unreturned items, but says he paid the applicant \$300 instead of giving them back. He says the issue is resolved and asks me to dismiss the claim.
3. In addition to the unreturned items, the applicant seeks the return of additional items, mainly purchased for mutual use during the relationship. She says the respondent kept a set of pots with lids, bedding that she put in his parent's camper in preparation for a camping trip they took together during the relationship, a barbeque, a patio set and one paddle used on the camping trip, a water softener, some bowls, glasses, wine glasses, a tray and a lemonade jug (additional items).
4. The applicant claims a payment of \$3,000, which she says is the value of the unreturned and additional items.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Did the parties agree to resolve the issue of the unreturned items by the respondent paying the applicant \$300?
 - b. Are there any of the unreturned items or additional items that the respondent is obliged to give back to the applicant? If so, which ones?
 - c. What is an appropriate remedy?

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. On June 18, 2017, the parties' dating relationship ended. The duration of the relationship was not before me. The parties indicated they had not started living

together. On that basis, I find that the *Family Law Act* does not apply to this dispute.

13. The respondent agreed to drive his truck and trailer, filled with most of the applicant's belongings, to her storage unit from his home, about a 750 kilometre round trip. This is undisputed and I find that he returned the bulk of the applicant's belongings at that time.
14. The respondent says that he told the applicant he had tried to pack everything that belonged to her, but that he might have missed the "odd small thing."
15. He says they agreed that he would pay \$300 in lieu of anything that had not been returned. He says he also re-paid the applicant an additional \$100 for money she had given his children to buy him a father's day gift.
16. The respondent says, and I find, that he still has the unreturned items. He filed a photograph of them in evidence.
17. The applicant did not respond directly to the respondent's assertion that he paid her \$300 to resolve the issue of any unreturned items. In their August 2017 emails, she did not contest that he had paid her money already, but said he now owed more. On balance, I find that the respondent paid the applicant \$300 for the unreturned items, at the end of their relationship. I find the applicant agreed. I find that the contemplated items were "small things", for the applicant's personal use, missed in packing up her belongings. I find that the \$300 payment resolves the respondent's responsibility for the skis, winter coat, and carpet cleaner.
18. In the following weeks, the respondent says he received communications from the applicant in which she kept telling him she was missing items, valuing them initially at a few hundred dollars, then \$1,000 and finally she claimed \$3,000. The applicant agrees that she kept changing the dollar figure for the unreturned and additional items.

19. The applicant says she kept changing her monetary demand because she did not realize precisely what was missing until a few months later. In submissions, she alleged that the respondent went through her boxes and removed some items without her knowledge. I find this unlikely. The unreturned items (winter coat, carpet cleaner, skis) were more likely simply omitted when the respondent was packing up the applicant's personal belongings.
20. Given that the applicant agreed to accept \$300 instead of the unreturned items, she is not entitled to their return now. I also note the undisputed evidence that the respondent packed and drove most of her belongings a considerable distance, without charge. I dismiss the applicant's claim regarding the unreturned items.
21. I will now consider the additional items that the applicant seeks payment to replace. In doing so I have found *Parry v. Bracaglia*, 2018 BCCRT 210, where the tribunal ordered payment of the replacement value of a shower head that belonged to the applicant, but which the respondent kept after they separated, helpful, although I acknowledge it is not binding upon me.

(a) Pots with lids, glasses, wine glasses, lemonade jug and tray

22. The applicant says she is missing a set of pots with lids, which she purchased for the parties' mutual use, during the relationship. The applicant provided a photograph of the pots at the respondent's home, with the bowls, tray and lemonade jug in the background. The respondent did not contest her evidence about these kitchen supplies. I find that these items were purchased for joint use during the relationship and that the respondent kept them.
23. I also find that these items were not contemplated in the agreement to settle the unreturned items for \$300. These items were purchased by the applicant for their mutual use during the relationship, when spending time at the respondent's home. Unlike the unreturned items, they were not for the applicant's sole personal use. A full set of kitchen pots is not the "odd, small thing" missed out when the respondent

packed her things to return them. The respondent continues to benefit from their use. It would be unfair to the applicant if she were unable to replace that benefit.

24. The applicant provided a visa receipt showing kitchen supplies purchased for their mutual use roughly \$200. I order the respondent to pay the applicant \$200 as replacement value of these kitchen and dining supplies.

(b) Bedding for camper, BBQ, Patio Set, One Paddle

25. The applicant claims for bedding that she put in his parent's camper in preparation for a camping trip the parties took together during the relationship, as well as a barbeque, a patio set and one paddle, all used on that same camping trip. Again, she provided photographs of these items. The respondent did not contest her evidence that she purchased these items for their mutual use and that he kept them. I therefore find that to be the case.
26. The applicant did not provide a receipt or other evidence about the replacement value of these items. I therefore award the applicant a nominal amount of \$100 for these items.

(c) Water softener

27. The applicant says she bought a water softener at the respondent's request and for his use. She provided a receipt showing her purchase of the water softener for \$727.99 dated in early June 2017, shortly before they broke up. She says the respondent did not pay her for or return the water softener. As her evidence is uncontested, I accept it.
28. I order that the applicant pay the respondent \$727.99 as a refund for the water softener.

ORDER

29. I have allowed the applicant's claim, in part. Under section 49 of the *Act*, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a

successful party for tribunal fees and reasonable dispute-related expenses. Given the applicant's partial success, I order the respondent to reimburse her for half of her \$125 tribunal fee.

30. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,090.49, broken down as follows:
 - a. \$1,027.99 as replacement cost or refund for the additional items;
 - b. \$62.50 as half of the applicant's tribunal fees.
31. As the amounts awarded are for current replacement cost, no pre-judgment interest is payable by the respondent.
32. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.
33. 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.
34. 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 it is an approved consent resolution order, or, 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.

Julie K. Gibson, Tribunal Member