



Civil Resolution Tribunal

Date Issued: July 24, 2018

File: SC-2017-005562

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Soutar v. Lee*, 2018 BCCRT 362

B E T W E E N :

Janice Soutar

APPLICANT

A N D :

Denny Lee

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about the repair and loss of an antique clock.
2. The applicant, Janice Soutar, says she left her clock with the respondent for repair and it was lost. She seeks a refund of the \$207.20 repair fee, plus \$100 to replace the clock.

3. The respondent, Denny Lee, says his store policy is that all repairs must be picked up within 90 days otherwise the store cannot guarantee loss or damage. He says the applicant far exceeded the 90 day timeframe.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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.
6. 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.
7. 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.
8. Under tribunal rule 126, 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

9. The issue in this dispute is whether the respondent lost the applicant's clock, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, 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.

Clock Repair

11. The applicant says that in August 2012, she took an antique clock that used to belong to her grandmother to the respondent for overhaul and repair. She says that after she picked up the clock, it still did not keep proper time, so she returned it to the respondent who identified a broken timing spring.
12. According to the applicant, the respondent said that because the clock was very old, he would have to keep the clock for a long time, possibly years, until he found the appropriate part. The applicant says she checked back with the respondent in March 2013, and again every year except in 2016, when she was ill.
13. The applicant says that in September 2017 she thought the clock was never going to be repaired, so she went to collect it due to its sentimental value. She says the respondent changed the location of his shop, and could not find the clock.
14. The respondent does not specifically deny any of these facts. However, he says the clock was returned to the applicant after completion of the initial overhaul, and no other receipt shows that the clock was brought back to him for further repair.
15. The respondent says his store policy is to keep items for 90 days after repairs, and after that there is no guarantee for loss or damage. The respondent provided a copy of this policy, but did not specify where it was posted, or how the policy was otherwise communicated to customers, including the applicant. Since there is no

indication that the applicant was specifically notified of this policy, I find it is not determinative of this dispute.

16. The applicant admits that she has no receipt or claim check showing that she left the clock with the respondent a second time in 2012. However, the respondent has not denied the applicant's assertion that he told her it could take years to find the correct part, or that she telephoned him in March 2013 and every year thereafter (except 2016) about the clock.
17. The applicant's accounts of these events, as set out in her various letters to the respondent, are consistent. Given this, and the fact that the respondent has not specifically denied her account, I accept it. I find that the respondent lost the applicant's clock.
18. Because the respondent lost the clock, I find that the applicant is entitled to a refund of the \$207.20 repair fee (\$185 plus taxes). I find that this remedy is not barred by the *Limitation Act*, as the loss of the clock was not confirmed until September 2017.
19. The applicant has not provided evidence to establish the value of the antique clock, but claims \$100 based sentimental value. I find that this amount is reasonable in the circumstances, and the amount was not disputed by the respondent. On a judgment basis, I order the respondent to pay the applicant \$100 for the clock.
20. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and dispute-related expenses. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees.
21. The applicant also claims \$33.80 for the cost of sending registered mail to the respondent, and has provided receipts. I find these expenses are reasonable in the circumstances, and therefore grant reimbursement.

22. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act* (COIA), as set out below in my order.

ORDERS

23. I order that within 30 days of this decision, the respondent pay the applicant a total of \$468.06, broken down as:
- a. \$207.20 as a refund of the clock repair fee,
 - b. \$100 reimbursement for the lost clock,
 - c. \$2.06 in pre-judgment interest under the COIA, and
 - d. \$158.80 as reimbursement of tribunal fees and dispute-related expenses.
24. The applicant is entitled to post-judgment interest under the COIA.
25. 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.
26. 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.

Kate Campbell, Tribunal Member