



Civil Resolution Tribunal

Date Issued: July 27, 2018

File: SC-2017-002549

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Woodward v. Errington War Memorial Hall Association*, 2018 BCCRT 384

B E T W E E N :

Cory Woodward

APPLICANT

A N D :

Errington War Memorial Hall Association

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about whether the respondent Errington War Memorial Hall Association is responsible for a camera and accessories the applicant Cory Woodward says were stolen while his band performed on May 26, 2017.

2. The applicant says the respondent provided a dressing room (greenroom) at its premises (hall) for the band to store their equipment and belongings, but failed to properly secure it.
3. The applicant claims \$2,362 as the present day replacement costs of the stolen property, (a Canon Rebel T6i camera, backpack-style carry bag, two lenses and a memory card).
4. The respondent says that it did not recklessly disregard or create a danger to the applicant's property. The respondent contests whether the camera was as ever at the hall on May 26.
5. The respondent says its contract with the applicant only provides for a change room, water and washroom access backstage, and does not include a secure place to store belongings. It asks that I dismiss the dispute.
6. The applicant is self-represented. The respondent appears through one of its members.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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

11. The issue in this dispute is whether the respondent should be required to compensate the applicant for the camera and accessories he says were stolen during the May 26, 2017 show.

EVIDENCE AND ANALYSIS

12. The applicant bears the burden of proving his claim on a balance of probabilities. To establish that the respondent was negligent, he would have to show that the respondent owed him a duty of care, failed to meet a reasonable standard of care, and that the failure to meet that standard caused the claimed damages.
13. For the purposes of my decision, it is not necessary for me to make a finding about whether the applicant's camera and accessories were stolen from the hall on May 26, 2017. I have assumed that they were. I place no weight on the respondent's contention that the camera was for personal, rather than band, use.
14. The band and the respondent signed an agreement on April 10, 2016 (agreement).

15. The agreement contains a “Backstage requests for the Artist” clause as follows: “A room where artists can change, access to a washroom backstage and 6 bottles of water to be provided. Juice and pop would be appreciated.” There is no mention of secure storage nor of the greenroom being locked. I find that the agreement does not require the respondent to provide those things during the show.
16. One clause in the agreement is titled “Venue Staff/Regulations/Liability”. It refers to the venue’s crew (technical staff, ushers, box office, front of house, janitorial, etc.) being the financial responsibility of the Presenter (the respondent). It then includes this language, “The Presenter will ensure that the venue’s crew is adequately covered by the necessary liability insurance and is therefore not the responsibility of the Artist in case of damages or injury sustained during the said performance dates.”
17. I find that the “Venue Staff/Regulations/Liability” clause does not include theft of personal property of the band, because the language expressly mentions the damages or injury to the crew only.
18. I turn to the applicant’s argument that, despite there being no express requirement that the respondent provide safe storage, it was reasonable for him to expect that the greenroom would be a “safe and secure” place to store equipment and belongings.
19. On this point, the respondent provided evidence from several experienced music industry performers and venue operators that it is their practice to:
 - a. only expect or provide a secure dressing room when the artist requests it; and
 - b. otherwise to bring valuables on stage during a performance, to safeguard them.
20. Given this music industry evidence, which was unchallenged except for the applicant’s assertion, I find that the greenroom was not required to be secured. I

say this because the applicant had not requested it, and it was not an obligation under the agreement.

21. I turn to the respondent's contention that the applicant willingly accepted the risk that his property might be stolen, and that the applicant and his bandmates failed to reasonably safeguard their property, by opening the greenroom window and leaving it ajar, and leaving the door open during the show. The respondent says the greenroom has double locking windows and wire mesh on the glass, and a door that can be locked.
22. The sound technician for the show saw a band member unlock and open the greenroom window before the show. He also gave evidence that he could not see the greenroom door when the band went on stage, but during intermission, he saw that the greenroom door was open.
23. Lane Franklin, an Executive Board Member with the respondent who represented them in this dispute, says he observed that:
 - a. the greenroom door was open at the start and end of the show, and
 - b. the greenroom window was open at intermission and the end of the show.
24. The applicant says no one from the band left the door or window open. However, the applicant did not provide a statement from the band member who was observed opening the greenroom door.
25. Given this evidence, I find, on a balance of probabilities, that the greenroom door was open at the start, intermission and end of the show. I also find that the window between the greenroom and the outside was opened by a band member, and left open during the show.
26. The evidence before me is that hall staff were not aware that the applicant brought his camera and accessories with him on May 26, 2017, nor were they asked to provide secure storage or a key for the greenroom.

27. The central question becomes whether a reasonable person would leave their valuables, in the greenroom, unattended and accessible to others, while performing on stage.
28. In *Crichton v. The Owners, Strata Plan KAS431*, 2017 BCCRT 22, the tribunal found that it was unreasonable for a person to leave her car keys unattended and accessible to others while she went to play bridge, though they were near a desk staffed by volunteers.
29. I find the situation here similar. Although there was staff at the hall, the applicant left his valuables unattended and in a space that was accessible to others.
30. Given that the applicant did not alert the respondent to the valuables, request a key to lock the greenroom nor ask the respondent to ensure the room was secure, the respondent did not fail in its duty. The applicant willingly assumed the risk that his valuables might be stolen, when he left them unattended and accessible. Given the circumstances, I find that the respondent did not fail to take reasonable care of the applicant's belongings.
31. My conclusion is also consistent with section 3 of the *Occupier's Liability Act*, which required the respondent to take reasonable care to ensure the property was reasonably safe. While the loss of camera equipment is regrettable, particularly when a memory card contained sentimental photographs, I find that it was not reasonable to expect that the camera and accessories would be secure during the show, without any prior agreement or request for secure storage.
32. For these reasons, I dismiss the applicant's claims and therefore this dispute.
33. I dismiss the respondent's request for reimbursement of its expenses associated with time spent preparing evidence and argument in this dispute. Such an order is not appropriate given the self-representation provision in section 20 the Act (see *Vancouver Island Firestopping Services Ltd. v. Goh et al* 2018 BCCRT 270 at paragraph 22).

34. Since the respondent did not pay tribunal fees, I make no order in this regard.

ORDER

35. I dismiss the applicant's dispute.

Julie K. Gibson, Tribunal Member