



Civil Resolution Tribunal

Date Issued: August 9, 2018

File: SC-2017-006477

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stowe v. Russo*, 2018 BCCRT 432

B E T W E E N :

Lana Stowe

APPLICANT

A N D :

Raffaele Russo

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Lana Stowe, says the respondent, Raffaele Russo, wrongfully removed a cabinet she had stored in a strata corporation's common property

storage area. The applicant says the respondent acted personally and individually, even though he is on the strata council and is also the strata's caretaker.

2. The applicant seeks \$382.95 for the loss of the cabinet, plus \$19.64 for an appraisal fee.
3. The respondent says everyone was warned by email that all items left in the open storage area would be removed. He says he removed the cabinet in his capacity as caretaker, on behalf of the strata, so is not personally liable. He also disputes the claimed value of the cabinet.
4. Both 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.
9. I have considered whether this claim is statute-barred under the *Limitation Act*. However, the evidence before me establishes that the applicant discovered her cabinet missing in late November 2015, and she filed her dispute with the tribunal on November 7, 2017. Thus, I find that the dispute was filed within the applicable 2 year limitation period.

ISSUES

10. The issues in this dispute are:
 - a. Is the respondent personally liable for removing the applicant's cabinet?
 - b. Must the respondent pay the applicant for the cabinet or the appraisal, and if so, how much?

EVIDENCE AND ANALYSIS

11. 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.
12. The parties agree that the respondent removed the applicant's cabinet from storage room #1 in the strata complex sometime in November 2015.
13. Both parties provided copies of a September 28, 2015 email from the strata property manager to all owners in the strata complex. The email included photos of the applicant's cabinet and several other household items. It said,

Please refer to the attached pictures, these items are sitting out in the open in the storage room.

If these are your belongings, please arrange to put them in your own locker. We will remove or dispose them if they are still sitting in the open area by the end of Oct.

[All quotes reproduced as written]

14. The respondent provided a copy of a March 13, 2015 email from the property management firm to the strata council, which said the respondent, who was also on the strata council and an owner of a strata lot in the complex, was the new janitor. The email said the respondent would take over the janitorial work effective April 1, 2015, and would be paid \$500 per month.
15. The applicant says the respondent removed the cabinet “personally and individually”, rather than in his capacity as janitor or strata council member. I disagree, for the reasons that follow, and instead find that the respondent removed the cabinet on the instruction of the strata, as part of his janitorial duties.
16. A November 22, 2017 email from TM, who was a strata council member at the time the cabinet was removed, confirms that the council directed the respondent to remove the applicant’s cabinet. She said the respondent delivered the cabinet to the dump, but it was not his decision as janitor. Also, the November 28, 2016 strata council meeting minutes show that the applicant asked the strata council to reimburse her for the cabinet. The minutes state that the applicant’s personal property was removed from a common area, following notice of the removal, with sufficient time provided, so her reimbursement request was rejected.
17. I find that TM’s email and the strata council minutes, combined with the September 28, 2015 warning email, establish that the respondent was acting in his capacity as janitor when he removed the cabinet, and that he was directed to do so by the strata. The applicant’s request for reimbursement from the strata in November 2016 confirms that she understood that it was the strata’s decision to remove her cabinet, rather than an individual and personal act by the respondent. I also note that the applicant’s November 27, 2015 email to the respondent inquiring about her cabinet states as follows:

As someone who helps take care of the building, do you know the whereabouts of the white cabinet that was in Storage #1, recently moved to the parkade empty space?

18. The respondent replied that he was sorry, and the cabinet was dumped after a long notice from the strata. He attached a copy of the September 28, 2015 warning email from the strata property manager. I find that this email exchange again confirms that the respondent removed the cabinet in his capacity as janitor. In particular, the applicant's email specifically says she emailed the respondent because he took care of the building.
19. Under the law, an employer is fully liable for the actions by employees committed in the course of their employment: *Aiken v. Van Dyk*, 2001 BCSC 1217 (CanLII). As I have found that the respondent was acting in the course of his employment as janitor when he removed the cabinet, I conclude that he is not personally liable for any loss or damage arising from that action.
20. The applicant says the respondent must be personally responsible for removing the cabinet, as the strata did not have proper authority to do so under the bylaws and the *Strata Property Act* (SPA), and did not pass a motion at a strata council meeting. Even if that is true (and I make no findings about that matter), that does not make the respondent personally liable. The evidence set out above establishes that the respondent was directed by the strata to remove the cabinet as part of his janitorial duties. As the respondent was acting in the course of his employment, any liability for removing the cabinet lies with the strata.
21. The strata is not named as a party to this dispute. For that reason, I make no decision about its liability for the cabinet, if any.
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees and dispute-related appraisal costs. The respondent did not pay any fees or claim any expenses, so none are ordered.

ORDERS

23. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member