



# Civil Resolution Tribunal

Date Issued: October 10, 2018

File: SC-2018-001706

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *O'Donnell v. Halfe*, 2018 BCCRT 601

B E T W E E N :

Mervyn O'Donnell

**APPLICANT**

A N D :

Lawrence Halfe

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant, Mervyn O'Donnell, says he was at the home of the respondent, Lawrence Halfe, and in the dark tripped over firewood and fell on his stomach onto a vice, which he says caused a hernia injury. The applicant claims \$5,000, as

compensation for “medical and other related expenses”. The respondent denies liability for the applicant’s injury. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

2. These are the tribunal’s formal written reasons. 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. Some of the evidence in this dispute amounts to a “he said, he said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
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 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.

## **ISSUE**

6. The issues in this dispute are a) whether the respondent is responsible for the applicant's tripping in the dark and subsequent injury, and b) if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

7. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
8. The applicant says he was watching television at the respondent's home. He says the respondent came home, threw a bunch of firewood by the back step but did not tell the applicant he had done so. The applicant says that when he went out to go home, he stumbled for a long time in the dark before he landed on a vice that the respondent had bolted to a stump. The applicant says he landed with all his weight on his stomach, causing a hernia.
9. The applicant says the respondent's photos of firewood piles do not show the firewood where it was when the applicant says he tripped. The applicant also says the light and the vice were not in the locations as shown in the respondent's photos.
10. While the applicant provided telephone numbers for a witness PO and for a physician, the applicant did not provide written statements. The tribunal's facilitation staff advise parties that they must provide all relevant evidence, including written statements from witnesses, given the tribunal's online format. I

find it is not reasonable to arrange for a teleconference to call the witnesses, at this late stage in the proceeding.

11. This said, the applicant submits he was trying to get a written statement from PO. There is no such statement before me in evidence. I find the absence of PO's statement suggests PO's evidence is likely unhelpful to the applicant. At a minimum, the applicant has not substantiated his version of events from the witness PO, who the applicant says was present in the respondent's home when the applicant came back inside in pain after falling.
12. The respondent does not dispute the applicant fell. However, the respondent disputes the claim that the fall caused a hernia and disputes that he is responsible for the applicant's fall. The respondent says the applicant was a regular guest at his home, and that the applicant knew where the respondent kept his wood and knew where the light was located for use outside. The respondent also says that he keeps his vice off to the side of the door exit and that there was no reason the applicant would have been near it when he fell. The respondent says that when the applicant re-entered his home, the applicant did not state he had fallen on the vice, but instead said he tripped over a block outside and was rubbing his shin. The respondent says he asked if the applicant was ok and if he wanted to go to the local clinic, and the applicant said "oh, I'm fine", and then sat in the living room for another few minutes before leaving to go home. The respondent also says he saw the applicant several more times after the event, and he was walking upright normally and riding his bike on other occasions.
13. The respondent also says that the applicant had previously told him about a hernia that he had. The respondent also says there was no reason for the applicant to exit his home using the rear steps, as the applicant's vehicle was out front and the side steps were used by all guests. The respondent says the back steps are only used to access the wood shed, pile and tools, which the applicant is well aware of.
14. The applicant's supporting evidence about how the fall occurred is a September 27, 2017 chart note from a Dr. Blackstock, who noted the applicant's own

description that he had tripped on logs in the dark, landed on a vice (directly on his abdomen), and developed a hernia afterwards. An ultrasound requisition dated February 9, 2018 indicates it was a “left groin hernia”. There is no explanation before me as to how the applicant’s alleged fall on his abdomen caused a left groin hernia.

15. While the applicant submits he incurred medical expenses, there is no supporting evidence before me. The applicant has provided a \$97.44 receipt for an overnight hotel stay on January 25, 2018, which the applicant says was necessary as there was a snowstorm and he was having surgery the next day. The applicant’s evidence includes a handwritten unsigned note that appears to be from a physician, given the content which includes reference to the applicant having surgery on January 26, 2018. I accept the applicant had hernia surgery on January 26, 2018. However, there is no medical evidence before me about the likely biomechanical cause of the applicant’s left groin hernia, such as a medical opinion that it likely resulted from a fall onto the applicant’s abdomen. The applicant’s only evidence about the date of his fall was March 31, 2017, the date he said he became “aware” he had a claim. There is no explanation before me about the gap in time between the March 2017 fall and the surgery 9 months later. There are no contemporaneous chart notes from a physician around the time of the fall, only the September 27, 2017 chart note referenced above. That chart note includes the statement, “medical records for potential legal action re: injury in March”. Yet, I have no other records, and certainly none from March or anything before September 27, 2017. If the applicant had injured himself as seriously as he says, believing the respondent to be responsible, I find it likely he would have sought more immediate medical attention.
  
16. I find the most likely scenario of what happened is as follows. The applicant was a regular visitor at the respondent’s home, which was a trailer in a trailer park. The fact that the applicant was there alone before the respondent returned home supports this conclusion. The respondent had firewood piled outside his back door, which is consistent with the fact that it was winter. The applicant knew where the

respondent kept his firewood, given his regular attendance at the trailer. The deck or patio area outside the respondent's backdoor is relatively small, before the steps down. The respondent produced a map of his trailer park and the entrances to his trailer and where the firewood was located at the back, with the driveway and guest parking more closely located to the other entrance. I accept this evidence. While the applicant alleges the respondent only installed the light for the photos for this dispute, I reject that submission.

17. Section 3 of the *Occupier's Liability Act* (OLA) required the respondent to take reasonable care to ensure his property was reasonably safe. On balance, I find that given the above circumstances, I find the applicant has not proved the respondent failed to ensure his property was reasonably safe. I accept the respondent would not reasonably have expected the applicant to use the back steps and even if he did, the applicant would have known to be careful of firewood. I find the applicant's fall was due to his own failure to be mindful of his own safety in the circumstances.
18. Even if I were incorrect in my conclusion above, I find the applicant has not proved the fall caused his hernia, for the reasons set out above about the lack of supporting medical records. I also find the applicant has not proved his claim for \$5,000 in damages, again given the lack of medical records and receipts other than the \$97.44 hotel bill. I find the applicant has not proved his claim against the respondent and that his claim must therefore be dismissed.
19. There were no tribunal fees paid by either party, and therefore I do not need to address any reimbursement for fees.

## **ORDER**

20. I find the applicant's claims, and therefore this dispute, must be dismissed.

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Shelley Lopez, Vice Chair