



Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2018-003190

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shen v. Cui*, 2018 BCCRT 785

B E T W E E N :

Nuo Shen

APPLICANT

A N D :

Zhu Yun Cui

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a claim for mental injury that the applicant, Nuo Shen, says was caused by the respondent, Zhu Yun Cui. The respondent denies that she caused an injury to the applicant.
2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 "she said, she said" scenario. The 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. 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.
5. 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.
6. 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

- 7. The issues in this dispute are:
 - a. Whether the respondent is required to pay the applicant \$1,000 for medical expenses and future treatments;
 - b. Whether the respondent is required to pay the applicant \$1,500 for pain and suffering;
 - c. Whether the respondent is required to pay the applicant \$2,500 for lost income; and
 - d. Whether the respondent is required to apologize to the applicant.

EVIDENCE AND ANALYSIS

- 8. In a case such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have read and considered the parties' submissions in their entirety, I have referred only to the evidence necessary to give context to my decision.
- 9. The applicant rented a room from the respondent. She was experiencing a number of changes in her life and intended to find another place to live. The applicant says that, on February 10, 2018, the respondent pounded on her door to threaten her and in an attempt to break in. The applicant says she called the police, who attended the home and advised her to spend the night with a friend.
- 10. The applicant says she moved out of the respondent's home as a result of this incident. She also says that she suffered shock and fear that affected her ability to

work and pursue her education. The applicant also says that she saw a physician and left her part-time employment due to the incident.

11. The applicant seeks reimbursement for medical expenses and loss of income she attributes to this incident, as well as damages for pain and suffering. She also asks that I order the respondent to apologize to her.
12. The respondent disagrees with the applicant's version of events. She says she and the applicant had arranged to meet to discuss matters related to the applicant's tenancy, but the applicant did not respond to her knocks at the door. The respondent denies that she was trying to break into the applicant's room or threaten her.
13. In support of her position that there had been an agreement to meet for a discussion, the respondent provided a copy of an exchange of text messages between the parties. The messages are not in English, and no translation was provided. The applicant questioned the accuracy of the messages. As I cannot read the messages, I do not place weight on their content. However, I do not find that the scheduling of a meeting would be determinative of the matter.
14. As noted above, the applicant bears the burden of establishing her claims for mental distress. Although not binding upon me, I note the decision in *Eggberry v. Horn et al*, 2018 BCCRT 224, which states that, where there is no evidence of mental distress, the claim must be dismissed. It is clear that the parties have different views of the events that occurred on February 10, 2018. I accept that the applicant found her interaction with the respondent to be unpleasant. However, in order to be successful, the applicant must establish that this event resulted in mental distress.
15. The applicant says that a physician diagnosed her with "post-traumatic stress disorder" on the day following the incident. However, this is not reflected in the documentary evidence, in which the physician states only that the applicant was unfit for work due to sickness. Further, a prescription confirms that a medication

was prescribed, but it does not comment on what condition or symptom it was intended to address. The applicant did not provide evidence to support her claim for unspecified future medical expenses or treatments.

16. Although she found it stressful, I am not satisfied that the evidence establishes that the applicant sustained a mental injury or any mental consequences as a result of the interaction with the respondent. As such, I do not find that she is entitled to awards for medical expenses or treatments, or for pain and suffering.
17. Turning to the issue of lost income, the applicant claims \$2,500 in damages without providing an explanation for this amount. She provided a letter from a former employer confirming that she left her employment in February of 2018 “due to illness”. This letter does not mention the incident. Further, the applicant did not provide any medical opinion to support a need to discontinue work. I am not persuaded that the available evidence suggests that the applicant left her employment, or establish that she sustained any loss of income, due to the incident.
18. The applicant also seeks an order that the respondent apologize to her. The tribunal generally does not order apologies because forced apologies are not productive or helpful. Although I decline to make such an order here, I would point out that the respondent’s reply as part of the dispute resolution process does appear to contain a form of apology.
19. In this case, I am not satisfied that the applicant has proven her claims. While I accept that the applicant found her interaction with the respondent unpleasant, I find that she has not substantiated her claims of mental distress and associated damages. Accordingly, I dismiss her claims.
20. Under the tribunal rules, the successful party generally is entitled to the recovery of their fees. As the applicant was not successful, I find that she is not entitled to reimbursement of tribunal fees. As there is no indication that the respondent paid tribunal fees, I will make no order in this regard.

ORDER

21. I order that the applicant's claims, and this dispute, are dismissed.

Lynn Scrivener, Tribunal Member