



# Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2018-000475

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Symonds v. Spiers*, 2018 BCCRT 797

**B E T W E E N :**

Amy Symonds

**APPLICANT**

**A N D :**

Connie Spiers

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a commercial tenancy and the tenant's items that were discarded. The applicant tenant, Amy Symonds, ran a commercial bakery called Butter Lane Bake Shop. The landlord was Howe Sound Trading Co. Ltd. (landlord), which the respondent, Connie Spiers, represented as its president at all material times. Significantly, the landlord is not a party to this dispute. The applicant says Connie Spiers owes her \$4,000 for the non-perishable items she discarded without the applicant's consent.
2. The parties are each 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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. Both parties appear to allege defamation, but I have not considered these allegations because under the Act, the tribunal has no jurisdiction over defamation.
7. 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**

8. The issue in this dispute is whether the respondent improperly discarded the applicant tenant's non-perishable goods, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed it below as necessary to explain my decision.
10. In March 2017, the applicant's bakery was affected by a flood caused by a third party. The applicant re-opened her bakery in mid-July 2017. However, the respondent locked out the applicant on August 21, 2017, for not having the required insurance. In September 2017, after a BC Supreme Court proceeding had been adjourned, the applicant and the landlord signed a mutual release that allowed the applicant's commercial tenancy to continue. However, the signed release expressly stated that it did not address the applicant's non-perishable items, and there is no evidence before me that the parties agreed or that the court directed they be handled in any particular way.
11. The applicant says when she returned to her bake shop, she found she "had nothing there". As referenced above, this dispute is about the applicant's non-

perishable items that she says the respondent improperly threw out, while the applicant had been absent from her bakery during the court proceeding.

12. The applicant says the respondent's actions were based on her presumption the applicant's storage bins were not up to "food code". However, the applicant says Onside Restoration had stored the items for 4 months in the same bins, without issue.
13. I turn to the crux of this dispute. The respondent says the applicant had been absent from her bake shop for about 2 weeks. The respondent says that as the landlord's representative, she entered the premises to dispose of rotting food and any open food that might soon attract rodents or insects. The respondent also unplugged appliances and said that the landlord had the right to do this, to protect the other tenants.
14. Significantly, the respondent does not dispute that at all material times the respondent acted in her capacity as the landlord's representative, rather than in any personal capacity. The lease agreement and the release are between the landlord and the applicant "dba" her bake shop. As noted above, the applicant did not name the landlord as a respondent in this dispute. As Ms. Symonds had no lease with Ms. Spiers personally, Ms. Spiers is not liable for any breach of Ms. Symond's lease with the landlord. For that reason alone, I find the applicant's claims against the respondent must be dismissed.
15. Given my conclusion above, I do not need to address the merits of the applicant's claims, and in particular whether her non-perishable goods were improperly thrown out. Nothing in this decision prevents the applicant from pursuing her claims against the landlord, subject to any applicable limitation period.
16. As the applicant was not successful in her claims against the respondent, in accordance with the Act and the tribunal's rules I find the applicant is not entitled to reimbursement of \$200 paid for tribunal fees.

**ORDER**

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

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Shelley Lopez, Vice Chair