



Civil Resolution Tribunal

Date Issued: December 18, 2018

File: SC-2018-005198

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boese v. Baloc*, 2018 BCCRT 871

B E T W E E N :

Ryan Boese

APPLICANT

A N D :

Danika Baloc

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about the return of personal property. The applicant, Ryan Boese, was in a relationship with the respondent, Danika Baloc. The relationship ended and the applicant wants the respondent to return his personal property, which he values at \$4,320.18.

2. During the facilitation process the parties reached an agreement for the respondent to return the applicant's personal property to him, however the applicant never received the personal property and the agreement fell through. The applicant says she is willing to return the applicant's personal property to him at any time.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
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.
8. The parties were in a relationship that has now ended. The uncontested evidence is that they did not live together or have a child together, and so they do not meet the

definition of spouses in the *Family Law Act*. I find the tribunal has jurisdiction to resolve this dispute.

ISSUES

9. The issues in this dispute are:
 - a. The value of the applicant's personal property, and
 - b. The manner in which the respondent must return the applicant's personal property.

EVIDENCE AND ANALYSIS

10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. In civil claims like this one the applicant has the burden of proving their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
11. The applicant wants the respondent to return the following items to him (the items), which he values at a total of \$4,320.18:
 - a. 1.51K Halo Engagement Ring valued at \$2,664.65
 - b. Nintendo Switch + 3 Nintendo Switch Games valued at \$705.55
 - c. PlayStation Games (15 total) valued at \$150
 - d. Acer Laptop valued at \$599.99
 - e. iPod 4th Generation (New) valued at \$199.99
12. The respondent initially disputed ownership of the Nintendo Switch, Nintendo Switch games and the laptop, although she now agrees to return them to the applicant with the rest of the items.

13. The applicant submitted evidence to support his valuation of the engagement ring and the Nintendo Switch and Switch games, which the respondent does not dispute. The applicant did not submit evidence to support his valuation of the PlayStation games or the iPod, however the respondent does not dispute the value of those items. I find the engagement ring, Nintendo Switch and Switch games, PlayStation games and iPod to be valued at the amounts the applicant claims.
14. The respondent disputes the value of the laptop. She says the applicant bought it for \$40 on Facebook marketplace, and that it is not worth \$600. Neither of the parties submitted any evidence to prove the laptop's value. The applicant bears the burden of proving his claim, and I find he has not proven the laptop's value. In the circumstances I find the laptop is valued at \$40. I find the total value of the items is \$3,760.19.
15. The parties consented to the disclosure of their tribunal settlement discussions. On August 10, 2018 the applicant emailed the case manager and asked to add to his claim a Super EverDrive with SD Card 32GB valued at \$149.99. The applicant fails to mention anything about this item in his submissions, and it was not part of the parties' agreement during the facilitation process. I find this item is not part of the dispute, and I decline to make a finding as to its ownership or value.
16. The evidence before me is that on August 9, 2018 the respondent agreed to return the items to the applicant that day. Due to arrangements with a third party falling through, that did not happen. On August 23, 2018 the respondent sent an email to the tribunal indicating that she wished to adhere to the agreement the parties reached on August 9, 2018.
17. As a general rule the tribunal will not order specific performance of a contract where monetary compensation will suffice. However, given that there may be some sentimental value to the items, and the fact that the respondent agreed to return the items to the applicant, I find an order for the items' return is appropriate in this case. I order that within 30 days of the date of this decision, at a reasonable time and date mutually agreed upon in writing in advance, the respondent or her agent must

deliver the items to the applicant at the applicant's address on the Dispute Notice. If the respondent fails to comply with this order, I order the respondent to immediately pay the applicant \$3,760.19 as the value of the items.

18. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The respondent initially disputed many of the applicant's claims, and the applicant is generally successful in the dispute, so I find the applicant is entitled to reimbursement of \$125 in tribunal fees for starting the dispute. As a result of the applicant's failure to reasonably respond to the third party who was going to assist the respondent with the items' delivery, the parties' agreement for that August 9, 2018 delivery fell through. Given these circumstances, I find the applicant is not entitled to the \$50 tribunal fee for resolving the dispute by tribunal decision.
19. The applicant claimed \$12.26 for the cost of registered mail. Since the applicant was required to serve the Dispute Notice on the respondent, I find this a reasonable dispute-related expense. I find the applicant is entitled to \$12.26 in dispute-related expenses.

ORDERS

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$137.26, broken down as follows:
 - a. \$125 in tribunal fees, and
 - b. \$12.26 in dispute-related expenses.
21. Within 30 days of the date of this order, at a reasonable time and date mutually agreed upon in writing in advance, the respondent or her agent must deliver the following items to the applicant at the address the applicant provided in the Dispute Notice:
 - a. 1.51K Halo Engagement Ring

- b. Nintendo Switch + 3 Nintendo Switch Games
 - c. PlayStation Games (15 total)
 - d. Acer Laptop
 - e. iPod 4th Generation (New)
22. If the respondent fails to comply with the order directly above, the respondent must immediately pay the applicant \$3,760.19 as the value of the applicant's personal property.
23. The applicant is entitled to post-judgment interest, as applicable.
24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member