



Civil Resolution Tribunal

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000190

Type: Small Claims

Civil Resolution Tribunal

Indexed as *Roebuck v. Sedrovic*, 2018 BCCRT 906

B E T W E E N :

Haley Roebuck

APPLICANT

A N D :

Clayton Sedrovic

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the further participation of the respondent Clayton Sedrovic due to his non-compliance.

2. The applicant, Haley Roebuck, says the respondent owes her \$3,680.83 for rent, property, cell phone expenses, and \$400 in unreturned property, including a dog. The applicant seeks the return of her missing belongings, or money to replace them.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules.
 - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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. Some of the

evidence in this dispute amounts to a “he said, she 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 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.

7. 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

8. The first issue is whether I should proceed to decide the applicant’s claim, without the respondent’s further participation given his non-compliance.
9. The second issue is to what extent I should order the respondent to pay the applicant the claimed amounts.

EVIDENCE AND ANALYSIS

Non-compliance

10. My September 10, 2018 summary decision to hear the dispute without the respondent's participation, given his non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
11. The respondent is the non-compliant party in this dispute. He has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact him with a request for a reply.
12. The Dispute Notice was issued on January 9, 2018. The respondent filed a Dispute Response on March 9, 2018. At the outset of the tribunal decision process the respondent stopped communicating with the tribunal as required. The facilitator made the following attempts at contact:
 - a. **June 27, 2018** – The facilitator emailed the parties requesting evidence with a deadline of July 7, 2018. The respondent did not reply and did not file evidence.
 - b. **July 16, 2018** – The facilitator emailed the respondent reminding him that his evidence was overdue and gave him a deadline of July 19, 2018 to provide it or confirm if he did not intend to file any evidence. The respondent did not reply and did not file evidence.
 - c. **August 3, 2018** – The facilitator emailed the respondent requesting a response to the applicant's submission, due August 10, 2018. The respondent did not reply.
 - d. **August 20, 2018** – The facilitator emailed the respondent with a reminder to provide response submissions by August 22, 2018. The email warned that if the respondent failed to reply, the dispute could be decided without his further participation. The respondent did not reply.
 - e. **August 27, 2018** – The facilitator called the respondent at the phone number he had provided. The person answering said that it was a wrong number. The

facilitator emailed a final written warning asking that the respondent reply by email by no later than August 29, 2018, failing which a tribunal member would decide the dispute without its participation. The respondent did not reply.

13. The facilitator referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without his further participation.

Should the tribunal hear the applicant's dispute?

14. The respondent provided no explanation about why he failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact him. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find it is more likely than not that the respondent was aware of the attempts to contact him and chose not to respond.
15. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
 - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
16. First, this claim does not affect persons other than the parties involved in this dispute.

17. Second, the non-compliance here occurred before evidence and submissions were filed. Third, given the facilitator's repeated attempts at contact and the respondent's failure to respond in any meaningful way despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicants in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy. That would be unfair.
19. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is impaired if one party fails to participate. I find that it would be wasteful for the tribunal to continue applying resources to this dispute, such as by making further attempts to seek the respondent's participation.
20. In weighing the factors, I find the applicant's claims should be heard. In deciding to hear the applicants' dispute I have put significant weight on the following factors:
 - a. the extent of the non-compliance is significant;
 - b. the applicant is not prejudiced if such an order is made; and
 - c. the need to conserve the tribunal's resources.

Merits of the Dispute and Damages

21. I have decided to hear the dispute without the respondent's further participation. I turn to the merits of the dispute.
22. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against him. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to

where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.

23. Having said that, I reviewed the Dispute Response, because it was filed prior to the respondent's non-compliance.
24. In the Dispute Response, the respondent says he was casually involved with the applicant for one month. This timeline was uncontested. As there is no evidence that the parties lived together for more than two years, I find the *Family Law Act* does not apply to this dispute.
25. I will address the claimed damages by category below.

Rent/Mortgage and Household Expenses

26. The applicant says that the respondent agreed that he would pay the mortgage while she would pay other household bills. However, she says the respondent did not pay the mortgage and contributed very little to their overall expenses.
27. The respondent denies making any commitment to pay mortgage or rent. He says he does not know of any stolen property or damage to the applicant's property. In his Dispute Response he referred to having "email money transfer records" showing that he gave the applicant money while he lived with her. He did not file any evidence.
28. The applicant filed some text messages in evidence showing that the respondent agreed to provide her with some money. However, these do not establish an ongoing commitment by the respondent to pay her for rent, mortgage or expenses.
29. On December 11, 2017 the respondent texted "I will give you my whole paycheque on the 20th..." In the following few weeks, the respondent continued to text promising to pay money to the applicant. At one point he refers to providing her with \$1,200 and says "An (sic) it all goes to you...".

30. Based on these text messages, I find the respondent agreed to pay \$1,200 towards either mortgage or household expenses, but never paid the applicant.
31. I order the respondent to pay the applicant \$1,200, within 10 days of this decision.

Cell Phone and Cell Phone Bills

32. The applicant says the respondent asked her to get him a cell phone on her existing contract and said he would pay the whole bill. She says he never did so.
33. A cell phone contract dated November 18, 2017 shows that a cell phone in the respondent's name was added to the applicant's account, with a first bill date of December 13, 2017.
34. The contract provides that, to cancel early, the remaining device balance must be paid, which is \$26.25 per month until October 18, 2019.
35. In his Dispute Response, the respondent says that he will return his cell phone to the applicant. He says he will pay the cell phone bill for the time he had use of it.
36. November 2017 text messages show that the respondent requested that the applicant add a phone to her account, and that he committed to paying the bill for his phone. In one text message, the respondent agrees to buy out the cell phone.
37. Since the applicant did not file the cell phone bills, I have decided this claim based on the cancellation fee.
38. I find that the respondent agreed buy out the cell phone and failed to do so.
39. Because the evidence shows that the respondent knew he was obliging the applicant to enter a long-term contract relating to his phone service, and given his commitment to pay for the phone and service, I find that, within 10 days of this decision, he must pay the applicant the cancellation fee of \$603.75.

Dog

40. A friend of the applicant provided a witness statement confirming that the respondent gave the applicant and her son a puppy, as a Christmas gift, in December 2017.
41. As well, a social media post written by the respondent on December 2, 2017 says, in part, "...picking up an early Xmas present for my little man and my amazing gf Haley...".
42. Given the evidence, especially the respondent's own description of the dog as a present, I find that the respondent purchased a puppy and gave it, as a gift, to the respondent and her son in December 2017.
43. The respondent is ordered to return it to the applicant, within 10 days of this decision.

Basement Floor

44. The respondent agrees that he was renovating the basement floors. He says the materials provided by the applicant were water damaged so he could not complete the job.
45. The applicant says the respondent conducted some demolition of her basement but left before he completed the flooring. She says the basement is unusable.
46. I find that the respondent was removing basement flooring at the request of the applicant. When their relationship ended before any new flooring was installed, the respondent did not complete the work.
47. Given that there was no evidence before me as to the expected timeline to complete the job, nor about whether there were usable materials provided to the respondent prior to his departure, I find that the applicant has not met the burden of proving that he should be responsible to complete the flooring job.
48. I dismiss this aspect of the applicant's claim.

Shed

49. The applicant says that the respondent promised he would shovel snow off her shed. When he failed to do so, the shed collapsed, damaging her property.
50. Text messages show that the shed caved in, due to snow, on November 10.
51. There is no evidence before me of the age or condition of the shed, nor of the timing of the snowfall, the request for the snow to be shoveled or how long after the request the shed collapsed. Therefore, I find the applicant has not met the burden of proving, on a balance of probabilities, that a failure to remove the snow caused the shed's collapse.
52. I dismiss this aspect of the applicant's claim.
53. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

54. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$2,002.97, broken down as follows:
 - a. \$1200 in money owing,
 - b. \$603.75 for cell phone contract cancellation,
 - c. \$24.22 in pre-judgment interest under the *Court Order Interest Act*, calculated from December 15, 2017 to the date of this decision, and
 - d. \$175 in tribunal fees.
55. I further order that, within 10 days, the respondent safely return the dog to the applicant, at a mutually convenient time and location.

56. The applicant is entitled to post-judgment interest, as applicable.
57. 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.
58. 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.

Julie K. Gibson, Tribunal Member