



Civil Resolution Tribunal

Date Issued: January 7, 2019

File: SC-2018-003519

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prashar v. Rona Inc.*, 2019 BCCRT 21

B E T W E E N :

Harjot Prashar

APPLICANT

A N D :

Rona Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Harjot Prashar, says he bought new wooden window blinds for his home. He says he left the blinds at the respondent's store to have them cut to size, and the respondent, Rona Inc., threw them away without his consent. The applicant seeks \$1,700 for replacement blinds.

2. The respondent denies liability, and says the facts set out by the applicant are false.
3. The applicant is self-represented. The respondent is represented by an employee, Doug Swift.

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 118 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. 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 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. 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: 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

7. The issue in this dispute is whether the respondent must reimburse the applicant for window blinds, and if so, in what amount.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The applicant says he bought new wooden window blinds for his house, and took them to the respondent's store to be cut to size. He says the respondent then threw the blinds away before he could pick them up.
10. The respondent agrees that in late January 2018, the applicant dropped off blinds to be cut. However, Mr. Swift, on behalf of the respondent, says these blinds were not new, and were not made of wood. Rather, Mr. Swift says the blinds were made of metal, very old, and in poor condition. Mr. Swift says that the applicant told him on Monday March 12, 2018 that the blinds came from a house he had sold, and he was trying to get them to fit in a new house.
11. Mr. Swift also says that a store employee, MD, told the applicant that the blinds likely could not be altered, and the applicant replied that if the blinds could not be cut they should be thrown out. Mr. Swift says the applicant left the blinds at the store for 3.5 to 4 weeks, and did not pick them up despite 2 telephone messages stating that they should be picked up or would be thrown out. Mr. Swift says the applicant did not respond, so the respondent was justified in throwing away the blinds.

12. As the applicant left the blinds in the respondent's care, the law of bailment applies. A bailment is a temporary transfer of property under which the personal property of a person is handed over to another person, a "bailee". In this case, I find that the respondent was a "gratuitous bailee", rather than a bailee for reward. I make this finding because the respondent did not sell the blinds to the applicant, and there is no indication that the respondent was going to charge for the blinds' alteration, had it occurred. Rather, the service was offered for free.
13. A gratuitous bailee is only liable for damage to goods if gross negligence is proved: see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273, and *Severinson v. Holloway*, 2018 BCCRT 42. Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable harm.
14. Based on the evidence before me, I find the applicant has not proven that the respondent was grossly negligent, or negligent at all. Thus, even if the respondent was a bailee for reward, my conclusion would be the same.
15. In making my finding that the respondent was not negligent, I am strongly persuaded by the written witness statements provided by the respondent. Employee MD's statement can be summarized as follows:
 - In late January 2018, the applicant approached MD in the store about cutting several blinds to size.
 - MD looked at the blinds. He saw that they were made of steel, and were old, dusty, bent, and "obviously well used with significant UV degradation of the remaining paint".
 - MD told the applicant that the blinds could not be cut down because they were made of steel, and because they had previously been cut down as far as the mechanisms allowed.

- The applicant told MD to try to cut the blinds anyway, as they were old and would be thrown out if they did not work.
- MD refused, and told the applicant to take the blinds away. The applicant said he could not take them at that time, and asked to leave them for a day or 2.
- The applicant did not pick up the blinds. After a week, MD telephoned the applicant and said the blinds would be thrown out if not collected. He repeated the same telephone message several days later.
- After the blinds had been at the store for 2 weeks, MD threw them in the dumpster.

16. MD's statement is consistent with that of employee SN, who witnessed the conversation between MD and the applicant. SN said the applicant wanted to have his blinds resized, but MD said it was not possible. According to SN, the applicant insisted that MD try to cut them anyway, and said that if it did not work he should just throw the blinds out. SN said the blinds sat in the back room for at least 2 weeks, after which they were thrown out.

17. I am persuaded by these witness statements because they were documented in writing by employees who saw the blinds and heard the respondent say they could be thrown away. MD and SN both confirm that the applicant said that if the cutting did not work, the blinds could be thrown away. I also note that the applicant does not dispute MD's evidence that he left telephone messages. Rather, the applicant says he did not have a chance to pick the blinds up. I find that MD's messages gave sufficient warning that the respondent would not store the blinds beyond 2 weeks.

18. Accordingly, I find the respondent was not negligent in throwing the blinds away. I find the respondent exercised reasonable care in the circumstances by warning the applicant through telephone messages.

19. I also find that the applicant has not established his claim that that the blinds left at the store were new wood blinds worth \$1,700. Employee HK's statement says that he saw the blinds, which were made of metal, bent, and had rust spots. This is consistent with the descriptions provided by MD and HK, who all saw the blinds. The applicant provided an invoice dated January 5, 2018, showing a price of \$1,620 plus GST for 2 inch faux wood blinds. However, the evidence before me does not establish that the applicant completed this purchase, or that these were the same blinds he left at the respondent's store. The invoice is not marked as paid, and instead says that the check should be made payable to Omni Blinds Inc. The applicant has not explained why, if he purchased these blinds from Omni, he then took them to the respondent's big box store to be cut rather than buying the correct size or asking the seller to alter them as part of the original purchase.
20. For these reasons, combined with the statements of MD, SN, and HK, I find the weight of evidence in this dispute establishes that the blinds left at the respondent's store were old and damaged, with little monetary value, and not new wooden blinds as claimed by the applicant. I therefore find that the respondent's action in throwing out the blinds was reasonable, as set out above.
21. I conclude that the applicant has not met the burden of proving his claim. It is therefore dismissed.
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

23. I dismiss the applicant's claim, and this dispute.

Kate Campbell, Tribunal Member