



# Civil Resolution Tribunal

Date Issued: January 11, 2019

File: SC-2018-000524

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Khullar et al v. Instorage Inc.*, 2019 BCCRT 52

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

Neeraj Khullar and Sid Khullar

**APPLICANTS**

**A N D :**

Instorage Inc.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

### INTRODUCTION

1. This dispute is about liability for theft from a storage unit.
2. The applicants, Neeraj Khullar and Sid Khullar, rented a storage locker from the respondent, Instorage Inc. They say someone broke into the locker in August 2016,

stole some items, and damaged others. They seek damages in the amount of \$3,280 for lost items, \$340 for cleaning, \$1,000 for “physical and mental agony”, and \$360 for time spent dealing with the break-in.

3. The respondent says it is not liable for any damages, due to a waiver contained in the written lease.
4. The applicants are self-represented. The respondent is represented by Phil Dewsbury, an employee.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issues in this dispute are:
  - a. Are the applicants entitled to \$3,280 for lost and damaged items, or \$340 for cleaning costs?
  - b. Are the applicants entitled to \$360 for time spent dealing with the break-in?
  - c. Are the applicants entitled to \$1,000 for physical and mental agony?

## **EVIDENCE AND ANALYSIS**

10. 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.
11. Ms. Neeraj Khullar rented a storage locker in the respondent's facility in April 2016. She says the respondent told her it was a gated, safe, and secure facility. Ms. Khullar and her family members stored personal items, including suitcases, blankets, clothing, and other household goods.
12. On August 12, 2016, the respondent called and said there was suspicious activity around the locker, so Ms. Khullar attended the facility and saw that there had been a break-in. The respondent admits that 4 lockers, including the one rented to Ms. Khullar, were broken into on August 12. This is confirmed in its incident report form. Photos and video evidence provided by Ms. Khullar show that the perpetrator likely accessed her locker by bending back the wire mesh that formed the locker's ceiling.

13. While I accept that the break-in occurred, I find the applicants have not met the burden of proving their claims for resulting damage and loss.

### ***Lease Terms***

14. First, I agree with the respondent that the written lease, which Ms. Khullar signed, releases the respondent from any liability for theft, including damage and loss. Clause 5(e) of the lease says that all personal property stored by the customer is stored at the customer's sole risk. It says the respondent, and its agents and employees, are not liable for any loss or damage to any personal property at the storage facility arising from any cause whatsoever, including burglary, theft, or mysterious disappearance. It also says the respondent is not liable for damage or loss due to the respondent's negligence, acts or omissions.

15. Further, clause 7 of the lease says the customer acknowledges and understands that the respondent does not insure the customer's personal property. It says the customer is required under the lease to provide, at their own expense, an insurance policy covering burglary or damage of personal property stored in the locker. Clause 7 also says that failure to carry this insurance is a breach of the lease, and that the customer assumes all risk of loss to personal property.

16. Ms. Khullar submits that these lease clauses do not absolve the respondent of liability because they are in fine print, were not mentioned to her, and were "hidden in the depths of the contract." I do not agree. Clauses 5 and 7 have the same size print as the rest of the lease, and paragraph 5(c) is printed in bold type. Also, clause 5 begins and ends with statements written in bold, capitalized letters, stating that the respondent's liability is limited by the terms of the lease. Ms. Khullar initialed both clause 5 and clause 7. For these reasons, I find she had the opportunity to fully review the clauses before signing, and that she agreed to them at the time she entered into the lease.

17. Based on clauses 5(c) and 7 of the lease, I find the respondent is not liable for any loss or damage to the applicants' belongings.

### ***Lost Items***

18. Second, even if the lease did not waive the respondent's liability, I would find that the applicants have not proven their claim for damage or loss. While Ms. Khullar claims \$3,280 for lost items, she did not provide any particulars about what items were lost, or their value. She did not provide a list of items stolen or lost. While Ms. Khullar says she gave the police a list of stolen items, she did not provide that list to the tribunal, and also did not provide a copy of the police report or other related documentation. Ms. Khullar provided photos that she says show items missing after the theft, the photos simply show objects in suitcases or boxes. Without a specific list, there is no way for me to know what items were there before the theft, and there is no way to assess their value.

### ***Cleaning Costs***

19. Ms. Khullar claims \$340 for washing and dry-cleaning of clothing she says was soiled during the theft. While I accept that some of the photos in evidence show dirt, Ms. Khullar did not provide any cleaning receipts, and did not provide a list of items that were cleaned. Without such evidence, I would not order any reimbursement.

### ***Lost Time***

20. The applicants claim claims \$360 for time Ms. Khullar and her children spent dealing with the theft. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. I see no reason to deviate from that practice here. Also, the applicants provided no specific accounting of the time in question. Finally, I find that the liability waivers contained in the lease, as summarized above, mean the respondent is not liable for this claim of lost time. For these reasons, I do not order reimbursement for lost time.

### ***Physical and Mental Injuries***

21. Ms. Khullar claims \$1,000 for physical and mental agony resulting from the break-in, and the respondent's subsequent actions. I deny this claim for the following reasons.
22. First, clause 5 of the lease says that the respondent shall not be liable to the customer for injury as a result of the customer's use of the storage space or storage facility, even if such injury is caused by the acts, omissions, or negligence of the respondent. Clause 5 further states that the customer releases and indemnifies the respondent for all such liability. I find that this clause means the respondent is not liable for Ms. Khullar's claimed physical and mental injuries.
23. Second, I find Ms. Khullar has not proven that she had physical or mental injuries arising from the break-in, or from the respondent's actions. She claims mental injury, but I find she has not provided sufficient evidence, such as a report from a mental health professional, to confirm that she suffered a mental injury. With regard to her claimed physical injury, Ms. Khullar provided a doctor's note confirming that she was off work for medical reasons in early August 2016, before the break-in. I accept her statement that she was recovering from a recent surgery. She provided a September 21, 2016 doctor's note stating she was still unable to work for medical reasons. While I accept this evidence, it does not establish that her ongoing disability from work was related to the break-in, or to the respondent's response to the break-in. The doctor's pre-printed form did not provide any reason for or explanation of the disability. Also, while I accept that the break-in was upsetting, Ms. Khullar did not provide any medical evidence to support the conclusion that the break-in or the respondent's actions caused a physical injury or made her pre-existing physical condition worse.
24. For all of these reasons, I dismiss Ms. Khullar's claim for damages for physical and mental injury.

25. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were unsuccessful and so I dismiss their claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay any fees did not claim dispute-related expenses claimed by either party.

**ORDER**

26. I dismiss the applicants' claims and this dispute.

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Kate Campbell, Tribunal Member