



Civil Resolution Tribunal

Date Issued: January 17, 2019

File: SC-2018-003333

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boese v. Gaba*, 2019 BCCRT 70

B E T W E E N :

Ryan Boese

APPLICANT

A N D :

Gary Gaba

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Ryan Boese, says that the respondent, Gary Gaba, broke into his home and stole property. He seeks compensation of \$1,260.74 for the repair of a window and for the missing items. The respondent denies that he broke into the applicant's home or that he is responsible for the claimed losses.

2. The parties are 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 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.
4. 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. The 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. Here, I find that I am 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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. 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.

ISSUE

7. The issue in this dispute is whether the respondent is responsible for the \$1,260.74 in compensation claimed by the applicant.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will only refer to that which is necessary to provide context to my decision.
9. The applicant says that the respondent brought a video gaming system to his home-based repair business to repair. After the repair was complete, the applicant says that the respondent came to his home on March 30, 2018, broke a window, and took the gaming system and another client's laptop computer. The applicant says the incident was captured by a neighbour's surveillance camera, and the police agreed that it was the respondent and his child who broke into the home and stole the items. The applicant says the respondent owes him the repair costs for the gaming system, as well as compensation for the broken window and the client's laptop.
10. The respondent agrees that he brought the video gaming system to the applicant to repair. He also agrees that he came to the applicant's home on the date in question to pick up the repaired gaming system but denies that he broke the window or stole any items. The respondent's evidence is that he and his child looked through the windows and rang the doorbell several times but nobody answered. After waiting for a while without being able to contact the applicant, they left. The respondent says

that he is not responsible for the applicant's losses, and questions why he should pay repair costs for a device that was not returned to him. He asked that the applicant pay to replace the gaming system but did not bring a counterclaim in this regard. The respondent also says that he is distressed by the applicant's false accusations.

11. Both parties provided copies of text messages in which the parties discuss the repair and pickup of the gaming station and then the applicant's belief that the respondent broke into his home, which the respondent denied. The contents of the text messages are consistent with the respondent's explanation of his activities. I do not agree with the applicant's argument that the text messages establish that the respondent created a "fake alibi" for the time the incident occurred.
12. The applicant says that the surveillance footage clearly showed the respondent "at the window grabbing items from inside the house". However, this is inconsistent with the description of the footage on the General Occurrence report from the municipal police department. In that report, an officer says that the surveillance footage shows a man identified as the respondent approaching the applicant's home and later departing. According to the officer, the footage does not show anyone else at the home until the applicant returned and discovered the break-in. The police officer noted that the "footage is of poor quality and does not show offence being committed".
13. Although the surveillance footage shows the respondent at the applicant's home, this is not determinative of the matter as the respondent admits that he was there. I give weight to the evidence of the police officer that the footage does not show the respondent committing any offence. Further, the fact that the footage does not show any other people at the applicant's home after the respondent's departure does not establish that the window was not broken and the items stolen prior to his arrival.
14. I acknowledge the applicant's belief that the respondent broke into his home and stole items. However, I am satisfied that he has not proven on a balance of

probabilities that the respondent was the person responsible. Accordingly, I decline to award the applicant his requested damages.

15. The applicant requested reimbursement of tribunal fees and dispute-related expenses. 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. As the applicant was not successful, I decline to make an order in this regard.

ORDER

16. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member