



# Civil Resolution Tribunal

Date Issued: February 8, 2019

File: SC-2018-004828

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Weaver v. Swihart*, 2019 BCCRT 156

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

Richard Weaver

**APPLICANT**

**A N D :**

Kammie Swihart

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Megan Volk

### **INTRODUCTION**

1. The applicant, Richard Weaver, rented a room from the respondent, Kammie Swihart. The applicant says that the respondent damaged some of his belongings and refused to return others when she abruptly asked him to move out. The applicant claims \$4,000 for belongings that he says the respondent did not return and \$983 for the cost of damaged items.

2. The respondent says that she did not ask the applicant to move out, that she did not damage the applicant's belongings, and that she no longer has any of the applicant's belongings. The parties each represented themselves.

## **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 relationships between parties that may 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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
5. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
6. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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 *Residential Tenancy Act* (RTA) does not apply to this dispute. Section 4(c) of the RTA says it does not apply where the homeowner shares a kitchen or bath with the tenant. It is undisputed that the parties shared a kitchen and bathroom during the applicant's tenancy. Given that, I find this dispute falls under the tribunal's jurisdiction because it is based on a contract between the parties and alleged damages.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the respondent damage the applicant's belongings?
  - b. Does the respondent have some of the applicant's belongings?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I refer only to the relevant evidence necessary to give context to my decision.
11. It is undisputed that for years the applicant rented a room in the respondent's home. It is also undisputed that during the applicant's tenancy the parties orally agreed that the applicant would do things around the house and yard in return for accommodations.
12. The parties agree that on May 20, 2018 the applicant left the respondent's house abruptly. The parties disagree how the tenancy ended. Given the claims, I find nothing turns on how the tenancy ended. I find that at that time the applicant was able, under RCMP escort, to collect some of his belongings from the home.

13. On June 19, 2018 the applicant asked the respondent for the rest of his belongings. The respondent told the applicant where he could collect them. Subsequently, the respondent collected more belongings on August 8, 2018 and September 15, 2018.
14. Numerous photos provided by both parties show items piled in various locations, including at the end of a driveway next to a roadway. From the photos I am unable to say whether the items shown were damaged, to what extent they were damaged, or who may have damaged them.
15. There is evidence that, in addition to the respondent, the respondent's daughter moved items and the respondent's son was at the home. As such, at least two other people could be responsible for the claimed damage.
16. The applicant says that the respondent still has some of his belongings and provided a list of missing items. The respondent says that she does not have any more of the applicant's belongings.
17. Given the burden on the applicant, I find the applicant has not proved that the respondent is keeping some of his belongings or that the respondent damaged his belongings. In any event, there was insufficient evidence to assess the alleged value of the missing items. As such, I dismiss the applicant's claims.
18. As the applicant was unsuccessful, in accordance with the Act and the tribunal's rules, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

## **ORDERS**

19. I order that the applicant's claims, and this dispute, are dismissed.

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Megan Volk, Tribunal Member

