



# Civil Resolution Tribunal

Date Issued: February 13, 2019

File: SC-2018-008058

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Chen*, 2019 BCCRT 174

Default decision – non-compliance

BETWEEN:

Yat Yu Wong

**APPLICANT**

AND:

Jack Chen

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the applicant, Yat Yu Wong, due to their non-compliance with the tribunal's directions as required, as discussed below.
2. This dispute is about an alleged personal injury. In their Dispute Notice the applicant says they rent a room in a house owned by the respondent, Jack Chen, and that they fell and sprained their ankle on uneven flooring inside the house. The applicant wants the respondent to pay them \$600 for medical expenses.
3. In their Dispute Response the respondent says they saw the applicant limping inside the house and the applicant told them they had fallen outside in the yard. The respondent says no one saw the applicant fall, so there is no way of knowing if the applicant fell on the respondent's property.
4. The parties are both self-represented.
5. 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.

6. The facilitator has referred the applicant's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
7. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 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.
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 issue in this dispute is whether I should hear the applicant's claims, dismiss the applicant's claims, or refuse to resolve the applicant's claims.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

10. The key difference between a dismissal order and a refusal to resolve under section 36 of the Act is that, subject to cancellation or notice of objection requests, disputes that are dismissed may not be re-filed with the tribunal, another tribunal or a court at a later date. Claims or disputes that the tribunal refuses to resolve may be re-filed with leave of the tribunal, subject to any applicable limitation period.
11. The applicant is the non-compliant party in this dispute and 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 case manager to contact them with a request for a reply.

12. The applicant's Dispute Notice was issued on October 29, 2018, which included their email address and phone number to be used for this dispute. The case manager then made the following attempts at contact:
  - a. On January 25, 2019 the case manager emailed the applicant informing them of a teleconference mediation scheduled for January 31, 2019 at 10:00 a.m. The email said the applicant was required to participate in facilitated settlement negotiations pursuant to section 25 of the Act and instructed the applicant to respond to the case manager on or before January 28, 2019 confirming their attendance at the mediation
  - b. On January 29, 2019 the case manager left a voicemail with the applicant asking them to respond and to inform them whether the applicant shared a kitchen or bathroom with the respondent, to determine whether the *Residential Tenancy Act* applies to the dispute.
  - c. On January 30, 2019 the case manager left another voicemail with the applicant asking them to participate in dispute communication.
  - d. On January 30, 2019 the case manager emailed the applicant asking them to respond to their directions. The case manager warned the applicant that failure to respond could lead to the tribunal deciding the case without the applicant's participation.
  - e. On January 31, 2019 the case manager emailed the applicant asking them to respond by midnight that night.
  - f. On February 4, 2019 the case manager emailed the applicant with a final warning, asking the applicant to respond by February 7, 2019. The case manager warned the applicant that failure to respond may result in the tribunal dismissing or refusing to resolve their claims.

13. The case manager then referred the matter of the applicant's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the applicant's participation, dismiss the dispute, or refuse to resolve the dispute.

***Should the tribunal dismiss the applicant's claims or refuse to resolve the applicant's claims?***

14. For the following reasons, I dismiss the applicant's claims.

15. As referenced above, the applicant filed a Dispute Notice. The applicant has provided no explanation about why they failed to communicate with the tribunal as required. I find the case manager made a reasonable number of attempts to contact the applicant. The case manager informed the applicant in writing at the beginning of the facilitation process that they must actively participate in the dispute resolution process and respond to the case manager's emails. Given that the applicant provided their contact information on the October 29, 2018 Dispute Notice, and given that the applicant did not respond to the case manager's communications between January 25 and February 4, 2019, I find it is more likely than not that the applicant knew about the case manager's contact attempts and failed to respond.

16. 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.

17. First, this dispute only affects the named parties. Second, the non-compliance here occurred early in the facilitation process, and no discussions occurred between the parties. The non-compliance made it impossible to determine the particulars of the dispute. The applicant effectively abandoned the process after providing the respondent with the Dispute Notice.
18. Third, given the case manager's attempts at contact and the applicant's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
19. Fourth, the prejudice to the applicant of proceeding to hear the dispute is outweighed by the circumstances of their non-compliance. I see no prejudice to the respondent in hearing the dispute without the applicant's participation.
20. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
21. If I refuse to resolve the claims, there would be no finality to this dispute as it would be open to the applicant to make a further request for tribunal resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
22. I find that in the circumstances of this case, it is appropriate to dismiss the applicant's dispute. Although it is not a binding precedent, I agree with the tribunal's reasoning in *Grand-Clement v. The Owners, Strata Plan, KAS 2467*, 2017 BCCRT 45 that it is problematic to force an unwilling applicant to pursue a dispute with the tribunal. I agree that to do so would go against the mandate of the tribunal and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.

23. 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. The respondent is the successful party but has incurred no tribunal fees and claimed no dispute-related expenses.

## **ORDER**

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

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Sarah Orr, Tribunal Member