



# Civil Resolution Tribunal

Date Issued: March 20, 2019

File: SC-2018-005027

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Borthwick v. Darveau*, 2019 BCCRT 347

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

Benoit Fortin Darveau

**APPLICANT**

**A N D :**

Shane Borthwick

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

### INTRODUCTION

1. The applicant Benoit Fortin Darveau says the respondent Shane Borthwick took his pickup truck and other belongings and failed to return them. The applicant says they reached an agreement that he would return the respondent's scaffolding and get the truck and other belongings back. However, the respondent never followed

through on the agreement. The applicant claims \$3,100 for his truck and new transmission, \$1,198 for his tent and hammock, and to have the respondent return the other belongings.

2. The respondent disputes what happened. He says the applicant agreed to have him and a few other people develop a piece of land in Creston, BC. The agreement was to help build the applicant's business, which the applicant described as an ecofriendly camp, in exchange for their living expenses and 1 acre of land each.
3. When the exchange did not work out as planned, the respondent returned to a regular paying job. When he left Creston, the respondent says he took whatever supplies he brought from home, including extension cords, a power bar and some kitchen equipment. Each of the workers received a tent as a "gift", so he took his on that basis.
4. The respondent agrees he took the truck, in order to tow his mother's camper trailer back to Elkford. He says the applicant knew he could retrieve the truck at any time, providing he sent a licensed driver to pick it up.
5. The respondent says the truck, hammock and inverter are available for pick up anytime by the applicant or a designate with a valid driver's license.
6. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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*. 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. 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, he 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.
9. 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.
10. 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.
11. 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.

## **ISSUES**

12. The issue in this dispute is whether the respondent took the applicant’s truck and other belongings without permission and, if so, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

13. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
14. In summer 2016, the respondent was working on a piece of land in Creston, BC, that had been purchased by the applicant. There was some verbal discussions about an exchange of living expenses, and perhaps a piece of land, for trying to get the applicant's eco-friendly or survivalist camp business up and running.
15. In September 2016, the respondent became dissatisfied with the arrangement. He took the truck and left for Elkford.
16. Although the truck was registered in the respondent's name, the parties agree that the truck belongs to the applicant.
17. A text message chain dated June 20, 2018 shows that the respondent took the applicant's truck and did not return it.
18. The respondent said that the applicant sent people to pick up the truck but none of them had valid driver's licenses, so he refused to let them take the truck.
19. In the series of texts, the applicant asks the respondent to bring him the truck, inverter, and whatever other items the respondent took, and says the respondent could then take the scaffolding.
20. I find that the truck is worth approximately \$2,400, based on text evidence, near in time to when the respondent drove it from Creston to Elkford.
21. There was no evidence before me establishing that the truck had a new transmission, except for the applicant's assertion that it did. The respondent admits that the truck's clutch was replaced for \$700. I find that, with this improvement, the truck's value is \$3,100, since it was not disputed by the respondent.

22. I find that the truck is the property of the applicant. Since the respondent took the truck, it was his responsibility to bring it back. He did not do so.
23. Because the truck has been in Elkford now for nearly three years, and is registered in the respondent's name, I find it appropriate to grant the application for monetary relief rather than return of the truck. I order that the respondent pay the applicant \$3,100 for the truck, within 30 days of this decision.
24. The parties agree that the respondent also took a hammock and a tent. The applicant provided no proof of the value of the hammock or tent, such as a receipt or an advertisement for sale. There was also some evidence that the tent may have been a gift.
25. In the circumstances, I find that the applicant has not met the burden upon him to establish his claim to \$1,198 for the tent or the hammock, on a balance of probabilities. I dismiss his claims regarding the other belongings on a similar basis. He has not provided any evidence of their value, nor any comprehensive list of the belongings he says are missing.
26. 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. As he was partly successful, I find the applicant is entitled to reimbursement 50% of tribunal fees, or \$87.50.

## **ORDERS**

27. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,281.51, broken down as follows:
  - a. \$3,100 as reimbursement for the truck,
  - b. \$94.01 in pre-judgment interest under the *Court Order Interest Act* from September 15, 2016 to present, and

c. \$87.50 in tribunal fees.

28. The applicant is entitled to post-judgment interest, as applicable.
29. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
30. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Julie K. Gibson, Tribunal Member