Civil Resolution Tribunal

Date Issued: April 12, 2019

File: SC-2018-007960

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vanderelst v. Sommerfeld*, 2019 BCCRT 455

B E T W E E N :

Janice Vanderelst

APPLICANT

A N D :

Timothy Sommerfeld

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, Janice Vanderelst, says she stored 4 leather bar chairs in a storage locker in her condominium building. She says she later learned the chairs had been taken to a rental suite the respondent owns in the condominium building (unit 308). The applicant seeks $600 for the chairs.

2. The respondent denies the applicant's claims. He says he never possessed the chairs, and his tenants used 2 of them after finding them in the storage locker assigned to unit 308. The respondent says the tenants returned the chairs, and he is not liable.

3. The parties are each self-represented. I note that the respondent's tenants are not parties to this dispute.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. 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.

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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to compensation for the 4 chairs, and if so, how much.

EVIDENCE AND ANALYSIS

9. 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.

10. For the reasons set out below, I find the applicant has not met the burden of proving her claims, and is therefore not entitled to any compensation for the chairs.

11. The applicant provided submissions and evidence about whether the respondent's rental arrangement was a short-term rental in violation of the strata corporation's bylaws. I find this is not relevant to the issue before me, and I therefore make no findings about it.

12. In her Dispute Notice, the applicant asked for an order for the return of the chairs. In her subsequent submissions to the tribunal, the applicant said the respondent's tenants returned the chairs. She wrote, "2 returned damaged and couldn't sell 2". Since the chairs were already returned, I make no order for their return.

13. The applicant submits that she is entitled to a remedy in replevin. I disagree. "Replevin" is an order for recovery of personal property taken wrongfully or unlawfully, and for compensation for resulting losses. I find the applicant is not entitled to any remedy in replevin because the chairs were returned to her, because the chairs were not taken wrongfully or unlawfully, and because she has not proven any losses.

14. I find the chairs were not taken wrongfully or unlawfully because the applicant abandoned them. The applicant admits the chairs were in the storage locker assigned to the respondent's unit (unit 308). She says she had permission from the previous owner to store them there, but provided no proof of such an agreement. In any event, the applicant was aware that unit 308 had been sold, as she had in-person and text communications with the respondent after he bought unit 308. I find that by leaving her unidentified chairs in the unit 308 storage locker without permission from the respondent or his tenants, the applicant effectively abandoned them.

15. While the applicant submits that the respondent or his tenants wrongfully cut her lock from the locker door, she has not provided any proof of this. Moreover, since no one else had permission to use the locker, I find the respondent and his tenants were entitled to cut any existing lock, and to remove unidentified items.

16. The applicant says the respondent should have notified the strata council, put up a notice, or contacted the property manager about the chairs found in the storage locker. However, I find the respondent had no such obligation, given that the storage locker was assigned to the sole use of the occupants of unit 308, and given that the chairs were not marked as being the property of another owner in the building.

17. I also find that the law of bailment applies to this dispute. Bailment is about the obligations on one party to safeguard the possessions of another party. The bailor is the person who gives the goods or possessions and the bailee is the person who holds or stores them. In this case, the respondent and his tenants are what are known as "gratuitous bailees", as the applicant did not compensate them for storing the chairs. A gratuitous bailee is only liable for loss or damage when the bailor can prove gross negligence: see *Bentham v. Bourdon*, 2019 BCCRT 167 and *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273.

18. Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable harm. I find the applicant has

not proven gross negligence in this case, as the chairs were returned, and the applicant has not provided any evidence to confirm her assertion that some of them were damaged.

19. I find the applicant has not proven that the chairs were worth $600, or that they were damaged or unsellable. The applicant provided no invoice or receipt showing what she paid for the chairs, and no documentation such as catalogue pages or brand information showing the value of similar chairs. She provided no photographs or description of the alleged damage, and no evidence that such damage was caused by the respondent or his tenants. The applicant provided no evidence that she unsuccessfully tried to sell any of the 4 chairs after they were returned, or evidence that she sold any chairs for a reduced price.

20. For all these reasons, I find the applicant has not established her claim for compensation for the chairs.

21. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of $225 in tribunal fees and $59.21 in dispute-related expenses. I note that I would have dismissed the applicant's claim for $59.21 in dispute-related expenses in any event, as she provided no receipts or particulars to explain this expense. The respondent did not pay any fees and claimed no dispute-related expenses.

ORDER

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

Kate Campbell, Tribunal Member