



Civil Resolution Tribunal

Date Issued: May 1, 2019

File: SC-2018-003162

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parkinson v. Kang et al*, 2019 BCCRT 519

BETWEEN:

Michael Parkinson

APPLICANT

AND:

Josh Kang, Anup Kang, and Anup Kang doing business as Yellow Cab

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie

INTRODUCTION

1. This dispute is about liability for theft of the applicant's tools from a shop.
2. The applicant, Michael Parkinson, worked as an independent contractor repair technician for the respondent, Anup Kang doing business as Yellow Cab ("AK

Cab”). The respondent Anup Kang is the owner of AK Cab, and Josh Kang is Anup Kang’s son and a dispatcher for AK Cab.

3. The applicant says someone broke into AK Cab’s shop (the “shop”) in April 2016 and stole his personal tools. He seeks damages in the amount of \$2,774.27 for the lost items, plus his expenses related to this dispute.
4. The respondents say the applicant was responsible for his own tools and they are not liable for any damages.
5. The applicant is self-represented. Anup Kang is the representative for all respondents.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 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 British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. Under tribunal rule 9.3(2), 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

10. The issue in this dispute is whether the respondents were responsible for securing the safe storage of the applicant's belongings, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The applicant submits that the respondents must pay for his belongings because the respondent Josh Kang permitted entry to the individual who took his belongings, failed to investigate the break-in, and failed to contact anyone after the break-in,

and that Anup Kang promised to replace his tools and was uncooperative with providing surveillance video to police.

13. In April 2016, the applicant was hired as a contractor performing auto repair services for the respondent AK Cab. On April 15, 2016, the applicant moved his personal tools into AK Cab's shop. He submits he was told by Anup Kang that his tools were safe there, and to provide his own lock for the access door to the shop, which he did.
14. The applicant explained he returned to the shop later that night and noted the access door was open. The lock he had placed on the door was still intact, but the entire latch assembly was detached from the door. He noted footprints on the door.
15. The applicant notified Josh Kang, the dispatcher on duty during the break-in, about the incident. Josh Kang phoned the Nanaimo RCMP, who then attended the shop. Josh Kang submits his only involvement in this dispute is that he was the person who phoned the police about the break-in. Although the applicant submits Josh Kang permitted entry into the shop to the individual who took the applicant's tools, I find that is not consistent with the evidence, which is discussed below.
16. The applicant further states that Anup Kang agreed to replace his missing tools, and provided a signed statement from a witness, ND, in support of this submission. ND stated the manager of AK Cab "did directly state" that AK Cab was responsible for replacing the applicant's tools. It is unclear when this conversation occurred, or whether ND was present for the conversation or was just informed of the conversation by the applicant.
17. Anup Kang submits he has never met ND and states the applicant has always been told that AK Cab is not responsible for his personal tools. Anup Kang further states there has never been an agreement between AK Cab and the applicant about replacing his tools. I am satisfied on the evidence that the applicant was permitted to leave his tools in the shop, but given the parties' conflicting evidence and the

ambiguity in ND's statement I find the applicant has not proved the respondents made any promise about their replacement.

18. The law of bailment applies in this situation. A bailment is a temporary transfer of property, where the personal property of one person, a "bailor," is handed over to another person, a "bailee."
19. 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 AK Cab is what is known in law as a gratuitous bailee, rather than a voluntary bailee for reward. A voluntary bailee for reward is someone who agrees to receive the goods as part of a transaction in which the bailee gets paid.
20. In contrast, a gratuitous bailment is where the bailor (here, the applicant) gets something for nothing. I say this because the respondents were not paid to store the applicant's personal tools. Here, the applicant got to leave his personal tools at the shop for free, instead of having to take them with him when he left and then having to bring them back for subsequent work shifts. AK Cab, as bailee, received no benefit from the applicant leaving his personal tools at the shop.
21. Even if I found AK Cab was a bailee for reward, given that it may benefit from the applicant's tools being ready on-site, the standard is what care a reasonable person would take of the belongings. If a thing entrusted to a bailee for reward is lost, then the burden of proof is on the bailee to show the loss was not a result of their failure to take the care a reasonable person would take of the possessions. Gratuitous bailees have traditionally only been liable for "gross negligence," however the courts are moving away from a strict classification between bailments for reward and gratuitous bailments, and instead there is a preference to determine liability based on whether or not the bailee has exercised reasonable care in all of the circumstances (see: *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273). This means that in order to determine whether the respondents are responsible for the applicant's missing tools, I must determine whether they exercised the same care they would have exercised over their own property in the circumstances.

22. Here, I accept that the applicant's personal tools were left at the shop, which was subsequently broken into and the tools were taken. There was evidence of forced entry into the shop, as documented by the police file and photographs. The applicant was also directly asked by the police if he thought the on-duty dispatcher, Josh Kang, was involved in the theft. The applicant said no, and no evidence was provided indicating any involvement by the respondents. In these circumstances, I cannot find the respondents were grossly negligent, or negligent at all, with respect to the applicant's missing tools. I therefore dismiss the applicant's claim.
23. The applicant gave the Nanaimo RCMP a description of his missing tools. A police report dated April 15, 2016 indicated the applicant estimated the value of the missing items at approximately \$2,570. The applicant has also provided two replacement quotes. One is dated May 11, 2016 totaling \$2,774.27, and one dated February 2, 2019 totaling \$3,411.11. The applicant requests his claim be increased to the \$3,411.11 amount as some of the tools listed in the May 11, 2016 quote are no longer available, and it more accurately reflects his losses. Given my conclusion the respondents are not liable, I do not need to address the appropriate value of the applicant's claim for the missing tools.
24. In accordance with the tribunal's rules, as the applicant was not successful in his claim, I also dismiss his claim for reimbursement of his dispute-related expenses. No one claimed tribunal fee reimbursement.

ORDER

25. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair