



Civil Resolution Tribunal

Date Issued: July 2, 2019

File: SC-2019-001260

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McClinton v. Williams*, 2019 BCCRT 791

BETWEEN:

KARREN MCCLINTON

APPLICANT

AND:

WANDA WILLIAMS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Karren McClinton, says that on or around February 14, 2017, the respondent, Wanda Williams, stole eight rolls of collectible coins from her. She asks that the respondent pay her \$2,500. Both parties are self-represented.

JURISDICTION AND PROCEDURE

2. 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.
3. 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, both parties in this dispute call 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
4. 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.
5. 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

6. The issue in this dispute is whether the respondent stole the applicant's rolls of collector coins, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means that the applicant must produce evidence that shows it is more likely than not that the respondent stole her coins. If the evidence falls short of that mark, I must dismiss her claim. For the reasons that follow, I find the evidence that the respondent stole the applicant's coins insufficient, and I dismiss the applicant's claims.
8. The respondent lives in Campbell River, BC. The applicant lives in a small town about an hour away. The applicant says she had a portable safe or safety deposit box in which she kept collectible coins. She says the respondent first became aware of the box of coins when the respondent and her husband delivered a dryer to her home and she paid them some money using coins. The respondent says she gave the applicant a dryer in 2013 and the applicant insisted on paying something for gas money, which was approximately \$25 in loose change. The respondent says she had no knowledge of any rolled coins.
9. The applicant says she spent the night at the respondent's home in Campbell River on February 14, 2017. She had her box of collectible coins with her. She slept in the guest room. In the early morning hours, she opened her eyes to see the respondent reach into the safe and put something in her pocket. The applicant says the respondent did this four times into one pocket and four times into the other pocket. The applicant asked the respondent what she was doing, and the respondent said, "nothing," and left the room. The applicant got up and looked into the box and found

eight rolls of coins were missing. She went back to bed, hoping the respondent would return the coins in the morning.

10. The next day, the applicant went to TD Bank in Campbell River and opened a safety deposit box. This is confirmed by a TD Bank receipt.
11. More than a year later, on July 18, 2018, the applicant visited the RCMP office in Campbell River. The constable's notes say that the applicant reported a theft of eight rolls of coins that occurred on February 15, 2017 in Campbell River.
12. The applicant says the 8 rolls of coins had 25 coins each. They were 1967 Centennial silver \$1 Canadian Goose coins. She submitted copies of eBay listings for individual coins of the same type, with bidding around \$15. She has only claimed \$2,500, which she says is less than their full value.
13. The applicant provided contact information (copies of business cards) for people she says have helped her. Parties are told during the tribunal process that they must provide all relevant evidence to the tribunal for this decision to be made. It is not enough for an applicant to simply provide contact information for potential witnesses – they should obtain written statements. However, there is no indication that any of these persons were at the respondent's home on February 14, 2017 or would be able to provide evidence about the alleged theft.
14. The respondent says she has known the applicant since 2008. In 2017, the respondent helped the applicant clean her home and took the applicant to appointments with various professionals. After some of these appointments, the applicant stayed the night at the respondent's home. The respondent says the applicant did not stay the night of February 14, 2017, and she remembers because it was Valentine's Day.
15. The respondent submitted statements from two community members in support of her character. They confirm that the respondent drove the applicant to and from appointments in Campbell River throughout 2017.

16. In assessing witness testimony, the test of the truth of a story is its harmony with the probabilities that a practical and informed person would recognize as reasonable in that place and in those conditions. Some aspects of the applicant's story have not been adequately explained. For example, if the applicant observed the respondent stealing her coins, why did she, the next morning, acquire a safety deposit box at the bank but not file a police report? She says it took her until 2018 "to try and get help from the RCMP", but she does not explain why it took her so long. The constable's notes say the applicant advised that she has reported the incident to the RCMP numerous times, but there were no files related to the incident. The constable concluded that the applicant was not credible and closed the file.
17. The applicant also did not explain why, after observing the respondent stealing from her, she allowed the respondent to drive her to appointments and help clean her home. In the absence of any explanation for this behavior, it is difficult to accept the applicant's version of events.
18. I do not mean to suggest that the applicant is being dishonest. However, the evidence of an honest witness may still be unreliable. It must be weighed against the undisputed facts and the surrounding conditions, including the parties' subsequent conduct. Again, the applicant bears the burden of proof and I find she has not met that burden.
19. After considering all the evidence, I cannot conclude that the respondent stole the applicant's rolls of coins. Accordingly, I must dismiss the applicant's claims.
20. 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. The applicant was not successful, so I do not order reimbursement of tribunal fees and expenses.

ORDER

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

Micah Carmody, Tribunal Member