



Civil Resolution Tribunal

Date Issued: July 3, 2019

File: SC-2019-001221

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Halltom v. Berry*, 2019 BCCRT 798

BETWEEN:

PAMELA HEATHER HALLTOM

APPLICANT

AND:

CHRISTOPHER BERRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an alleged debt following the breakdown of a romantic relationship. The applicant, Pamela Heather Halltom, says that after the relationship ended the respondent, Christopher Berry, either kept or disposed of her personal property. She says that the property is worth \$4,500.00. The applicant also claims that the respondent owes her \$500.00.

2. The respondent denies owing the applicant \$500.00. He also argues that the applicant abandoned her property and told him not to contact her again and therefore he was no longer obligated to store it or return the personal property to her. He also says the applicant refused to return a pendant and a hard drive with 10 years of photos on it. Both parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 "she said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 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 therefore decided to hear this dispute through written submissions.
5. 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.

6. 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.

ISSUES

7. The issues in this dispute are:
 - a. whether the respondent unlawfully kept or disposed of the applicant's personal property and if so, what is the appropriate remedy, and;
 - b. whether the respondent owes the applicant \$500.00 and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove her claim. She bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

The Personal Property

10. The applicant and the respondent were planning on moving in together so decided to put the applicant's property in the respondent's storage locker in February 2018. The couple broke up in July 2018 and the applicant retrieved several of her belongings at that time. The applicant left the province for work on August 11, 2018 and she was communicating with a mutual friend then about the exchange of items including those in the storage locker.

11. The couple started texting later in August 2018 and again discussed moving in together. The applicant returned from out of province late September 2018 and the parties reconciled but broke up for the final time in October 2018. The texts indicate that the parties were attempting to again exchange property at that time.
12. The respondent submits that the applicant had numerous opportunities to retrieve her property and that she did retrieve items from his home. He says he took her to the storage locker but she indicated that that were only a few items in there and that she said that she did not want the property.
13. The respondent points out that he has communications from the applicant that she did not want the remaining property back.
14. The respondent submitted a November 2, 2018 text message in which the applicant says that she has said goodbye to all her “shit” and tells the respondent not to text her anymore or she will call the police alleging harassment. The respondent told her in the next text that if she wants her things back she knows what to do otherwise to leave him alone. I infer from this that the respondent meant that she must return his property if she wanted hers back. The applicant wrote back that she told him not to contact her anymore.
15. The respondent also provided an undated text message in which the respondent says he will give the applicant everything that belongs to her and the applicant says that she does not really care about anything the respondent has of hers.
16. The evidence suggests that the parties did not have any further communication until February 2019 when the applicant went to the storage locker and noticed that the lock was gone, which meant that the locker was vacant.
17. In February 2019, the respondent began texting with V, a male friend of the applicant. In those texts the respondent stated that he still had 90% of the applicant’s possessions which until recently had been in the storage locker. The respondent told V that he only donated a few clothes that the applicant had left at his house previously.

18. The respondent attached to his text to V a picture of closed storage boxes which do not clearly indicate what is actually inside. V asked where the five suitcases belonging to the applicant are as they are not shown in the picture. The respondent says he has downsized items but has the suitcases. He said he got rid of garbage items and he will find the suitcases and send pictures.
19. In the texts the respondent constantly mentions that he is willing to return the property if he gets his pendant back. But he says that he will have to donate the remaining items in two days as they are sitting outside and are a nuisance to other people in the new complex he has moved into. He asks V to send him a picture of the pendant.
20. The respondent admits that although he claimed he still had the applicant's property this was after he had already disposed of it. He says he did this because he was attempting to bargain to get his property back from the applicant. The respondent sent the applicant an email in April 2019 where he admits to her that he has not had her property for a long time, even before he was in contact with V. He points out in that email that the applicant made it clear previously that she did not want it back.
21. On balance, I find the evidence shows that the respondent disposed of the majority of the applicant's property by February 2019, although he did maintain possession of a few unidentified items as represented by the storage boxes the applicant did not contest were hers.
22. The respondent has also provided an email from February 2019 in which the applicant says that he can come and get his hard drive and that she is sorry for anything that happened that made life harder. She also says she is going to cancel the tribunal procedure which she started on February 11, 2019.
23. The applicant admits in her submissions that she still has a pendant and a hard drive containing photos that belong to the respondent. She also provided an additional submission after the respondent provided proof she had said she did not want the property back. She says that it was true that there were a few times when

she was ready to give up on her stuff after dealing with the issue for so long but she argues that this is irrelevant because numerous times she tried to get her stuff back unsuccessfully.

24. The respondent alleges that the value of the applicant's property that he donated was about \$500.00 and not the \$4,500.00 the applicant claims. The applicant has provided numerous text messages from different time periods claiming she is missing several belongings. The applicant did not submit an itemized list to the tribunal and did not include any indication or proof as to the value of the specific items.
25. I 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 is what is known as a "gratuitous bailee", as the applicant did not compensate the respondent for storing her items.
26. Gratuitous bailees have traditionally only been liable for "gross negligence," however the courts are moving away from a strict classification between bailment 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).
27. I find the applicant has not proven that the respondent was under an obligation to exercise reasonable care in the circumstances as the applicant clearly indicated in November 2018 that she no longer wanted the property and threatened the respondent with legal action if he contacted her again. At that point I find he was no longer under any obligation to safeguard the applicant's personal property. I find the respondent was entitled to dispose of the applicant's property at that point, which as noted he ultimately did for the bulk of the items.

28. The applicant's claim against the respondent is arguably also one of conversion, although the applicant did not expressly rely on bailment or conversion. The tort of conversion involves wrongfully holding on to another person's property and claiming title or ownership of that property. Detinue refers to continuous wrongful detention of personal property, with the general remedy being the return of the asset or market value damages.
29. The tort of conversion and detinue is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner's rights: see *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 (CanLII) at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 (CanLII) at para 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 (CanLII) at para. 58, *Dhothar v. Atwal*, 2009 BCSC 1203 (CanLII) at para 15.
30. The law is clear that the applicant must prove:
- a. A wrongful act by the respondent involving the applicant's personal property;
 - b. The act must involve handling, disposing, or destroying the goods; and
 - c. The respondent's actions must have either the effect or intention of interfering with (or denying) the applicant's right or title to the goods.
31. In this case, the focus is on whether the respondent's action in refusing to return the applicant's property, on the basis that the applicant abandoned them, was wrongful. I find that if the applicant effectively abandoned the personal property, the respondent is not liable for the tort of conversion (see *Bangle v. Lafreniere*, 2012 BCSC 256 at paragraph 30). As set out in *Bangle*, if the applicant abandoned the personal property, the respondent's continued possession is not conversion because in so doing the respondent was not interfering with the applicant's right of possession. In other words, if the applicant abandoned her personal property, the respondent does not have to return it to the applicant. As indicated above, I find the applicant abandoned her property in November 2018. The applicant has not proved her claim in either bailment or conversion.

32. Even if I had found the applicant had not abandoned the items, I still would not have found that she is entitled to be reimbursed \$4,500.00 for them. The applicant has not proven the specific items she claims the respondent did not return or their value. In the Dispute Notice the applicant described the requested resolution as returning all personal belongings included in the list and “anything else” not mentioned. There are numerous lists contained in the applicant’s evidence so it is unclear which items she means. There are also no receipts or other evidence to show their market value. I dismiss the applicant’s claims about her personal property.

The \$500.00

33. Evidence in bank statements shows money going back and forth between the couple in September and October 2018 well in excess of the \$500.00 claimed. I find that this does not assist the applicant’s claim that the respondent specifically borrowed \$500.00 and did not return it. In fact, it is more supportive of the respondent’s submission that they were in a relationship that involved monetary exchanges between them.

34. The applicant acknowledged there was not much factual evidence establishing that the respondent owed her money. She points to one 2018 text message but notes that it did not state the exact amount and then other text messages which involve other people that refer to the debt.

35. Further, the basis for the debt claim is unclear with the applicant sometimes saying that the respondent borrowed money from her savings and did not tell her. Other times she points to a text message discussing the respondent borrowing \$300.00 which he will repay after he sold his vehicle. And on other occasions the respondent says that the respondent was holding on to money for her while she went on the work trip out of province. I find the multiple bases the applicant refers to for the debt are inconsistent and not persuasive.

36. For example, the applicant says that she was away for work and requested that the applicant hold on to the money for her. However, the evidence indicates that when

the respondent was going out of the province for work that the couple was in the midst of the July 2018 breakup and she was texting a common friend to assist her in getting her property back in August 2018. I do not accept that the respondent would have been entrusted with the applicant's savings at this time. The applicant has also not explained why the respondent would be holding the money rather than her placing it in the bank.

37. Also, as noted, the applicant points to a text in the context of the couple getting back together in August 2018 while she was still out of province. I first note that the amount discussed in the text message is \$300.00 and not \$500.00. Also, the text message does not confirm that the applicant agreed to lend the money at that point. It also does not explain how this would be proof of the respondent taking her money without her knowledge.
38. The applicant has provided a text in which V asked the respondent about the money the respondent owes the applicant. No amount is mentioned. The respondent answers by asking about the thousands that he gave the applicant along the way.
39. Based on all of the above, I find that the text messages and other evidence provided do not establish that the respondent borrowed and failed to repay the applicant \$500.00.
40. In her submissions the applicant says if she cannot get the \$500.00 back as payment of a loan she wishes to add it to the claim as reimbursement for the insurance she paid on her storage unit. The applicant says she paid to insure her own storage locker prior to moving her things into the respondent's storage unit. There is also evidence that she later moved storage lockers just before the October 2018 breakup. It is unclear on what basis the applicant suggests that the respondent should be responsible for this amount and therefore I find that he is not liable for the \$500.00 claimed.
41. The applicant also made reference to whether the \$500.00 was a gift or a loan, although neither party provided detailed submissions on this point.

42. In a civil claim, the burden of proof is usually on the applicant. However, under the law of gifts, once the applicant has proved the transfer of the goods, the burden shifts to the person alleging the items were gifts, in this case the respondent (see *Pecore v. Pecore*, 2017 SCC 17).
43. Because I have found the evidence does not establish that the applicant transferred the respondent \$500.00 in August 2018, or that the respondent did not return it, I find that I do not need to consider whether the \$500.00 was a gift.
44. 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. However, there is no claim for fees and expenses.

ORDER

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

Kathleen Mell, Tribunal Member