



# Civil Resolution Tribunal

Date Issued: July 25, 2019

File: SC-2019-000810

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ArtsConnect Tri-Cities Arts Council v. Loubert*, 2019 BCCRT 908

BETWEEN:

ARTSCONNECT TRI-CITIES ARTS COUNCIL

**APPLICANT**

AND:

ROGER LOUBERT

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about the return of commercial property.
2. The applicant, ArtsConnect Tri-Cities Arts Council (society), says the respondent Roger Loubert is the society's former president and that Mr. Loubert took the

society's property and refuses to return it. The applicant society seeks the return of its property or \$5,000 in compensation. The respondent denies liability.

3. The applicant is represented by a board member. The respondent is self-represented.

## **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*. 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. 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.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the Act:
  - 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**

- 8. The issue in this dispute is whether the respondent improperly took possession of the applicant's property, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

- 9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. Both parties provided little information in their submissions and minimal supporting evidence. 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.
- 10. The applicant says the respondent was the former president of its society, and improperly took possession of various items belonging to the society, including photos, a laptop computer, a hard drive, storage furniture and various flags and poles. The respondent did not specifically deny that he took the items, but rather says there is no evidence proving the applicant's claims. The respondent does not suggest he was entitled to personally take possession of the items in question and he does not admit he has them. The majority of the respondent's submissions dealt with various complaints about the society's governance, which I find are not relevant to the dispute before me. I note the respondent did not file a counterclaim. As such, I have not dealt with the respondent's governance complaints.
- 11. The only evidence the applicant produced about the items in question is an April 2019 email from a board member listing the items they "believe" the respondent took, and their estimated value. As noted above, the burden of proof is on the applicant society to show on a balance of probabilities that the respondent took its items and has failed to return them. In the circumstances, I find that the applicant

has not proven that the respondent took the items or has them in his possession. Therefore, I dismiss the applicant's claims.

12. Even if I had found that the respondent took the items, I would not have awarded the \$5,000 of compensation sought. Although the applicant produced the April 2019 email listing the items and the estimated values, I find the email insufficient to prove the reasonable values of the items as it was written by an interested board member, without sufficient detail about the individual items or any accompanying receipts that would allow me to determine the value of the items.
13. Under section 49 of the Act, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that it is not entitled to reimbursement of their tribunal fees. No dispute-related expenses were claimed.

## **ORDER**

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

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Andrea Ritchie, Vice Chair