



Civil Resolution Tribunal

Date Issued: August 8, 2019

File: SC-2019-003116

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *D'Odorico v. Walters*, 2019 BCCRT 950

BETWEEN:

LOUISE D'ODORICO

APPLICANT

AND:

HAROLD WALTERS

RESPONDENT

AND:

LOUISE D'ODORICO

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the return of personal property. The applicant, Louise D’Odorico, says that the respondent, Harold Walters, failed to return some of her property after the breakdown of their relationship, including a motorcycle helmet, leather coat, bike, 3 outdoor chairs, a bird feeder, area rug, jacket liner, rain pants and glass hummingbird figurines. She seeks an order that Mr. Walters pay her \$5,000, the claimed value of the unreturned items. Mr. Walters denies that the helmet, coat, bike, jacket liner and rain pants belonged to Ms. D’Odorico and says that she did not own any chairs. He says the area rug was dirty and disposed of, and that he does not have the bird feeder or hummingbird figurines.
2. By counterclaim, Mr. Walters also seeks \$5,000, which includes \$900 in unpaid rent, \$160 for a loan made to Ms. D’Odorico, \$225 in storage fees, and the remaining \$3,715 for various items he says Ms. D’Odorico stole from him.
3. Both parties are 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* (CRTA). 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. Some of the evidence in this dispute amounts to a “she 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.

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 CRTA:
 - 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.
8. I note the *Family Law Act* provisions do not apply to this dispute as the parties' relationship was under 2 years, discussed below. As for the counterclaim for rent, I also note the *Residential Tenancy Act* provisions do not apply on the basis that the Residential Tenancy Branch refuses jurisdiction over "roommate disputes", which the parties say they were after the relationship ended. For these reasons, I find the tribunal has jurisdiction to resolve this dispute.

ISSUES

9. The issues in this dispute are:

- a. Whether Mr. Walters unlawfully kept or disposed of Ms. D'Odorico's personal property, and if so, what is the appropriate remedy, and
- b. Whether Ms. D'Odorico must reimburse Mr. Walters \$5,000 for rent, a loan, storage fees and various personal property.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. D'Odorico bears the burden of proving her claim, on a balance of probabilities. In the counterclaim, Mr. Walters bears this same burden. 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.
11. The parties were in a romantic relationship and living together in a home owned by Mr. Walters. The relationship dissolved sometime in the fall of 2017 and Ms. D'Odorico left the home in January 2018.
12. The parties disagree on specifically when their relationship started and ended, but they both agree the relationship lasted less than 2 years. Therefore, I find nothing turns on the disagreement.
13. When Ms. D'Odorico left the home in January 2018, several of her items were left behind. In March 2018, Mr. Walters advised Ms. D'Odorico he placed her remaining items on the covered back deck and she had 5 days to pick them up, or he would dispose of them. The parties arranged for an acquaintance of Ms. D'Odorico's to pick up the items from Mr. Walters' back deck on March 10, 2018. The acquaintance picked up the items, but Ms. D'Odorico did not accompany him.
14. Later on March 10, 2018, Ms. D'Odorico emailed Mr. Walters stating she was missing her helmet, jacket, first aid kit, bike, 2 beach chairs and her bird feeder. It is unclear whether Mr. Walters responded to this email.

15. Ms. D'Odorico says that the clothing items and hummingbird figurines were gifts from Mr. Walters. She says she purchased the bike and chairs herself, and that the bird feeder belonged to her late father.
16. Mr. Walters denies that he has any of Ms. D'Odorico's belongings, and specifically says that the clothing items and bike were purchased by him not as gifts for Ms. D'Odorico but were items he allowed Ms. D'Odorico and his own grandchildren to use. Mr. Walters further says Ms. D'Odorico did not have any beach chairs and that the bird feeder was left hanging on the back deck with Ms. D'Odorico's other items, so he believes it was picked up by the acquaintance. Mr. Walters says he does not have the hummingbird figurines and believes they were taken by Ms. D'Odorico.
17. Neither party provided receipts for the above-noted items. Ms. D'Odorico provided her own estimates for the items' replacement values, while Mr. Walters says he bought several of the items used, and that they were inexpensive. As evidence to support her claim, Ms. D'Odorico provided various pictures from the internet of items which she says are similar to her missing belongings. No prices or values were included with the pictures.
18. The parties have differing views as to whether the clothing items purchased by Mr. Walters were for his own use or were gifts to Ms. D'Odorico. As discussed in *Lundy v. Lundy*, 2010 BCSC 1004 at paragraph 20, in order for a gift to be established, there must be an intention to donate, an acceptance, and a sufficient act of delivery. The evidence should show that the intention of the gift was inconsistent with any other intention or purpose. The burden of proof is on the person alleging the existence of a gift. This means that Ms. D'Odorico must prove that the various items were indeed gifts.
19. In the circumstances, I am satisfied that Ms. D'Odorico has not proven on a balance of probabilities that the clothing items were gifts. Additionally, I find Ms. D'Odorico has not proven that Mr. Walters unlawfully kept, or disposed of, the bike, chairs, area rug, bird feeder or hummingbird figurines. I find Ms. D'Odorico has not established that she was the rightful owner of the clothing items, bike or chairs.

20. Regarding the area rug, Mr. Walters said in his Dispute Response that he threw the rug away because it was dirty. Ms. D’Odorico did not dispute the condition of the rug and did not provide any submissions or evidence about the condition or value of the rug. Given the evidence, I find Mr. Walters’ did not act unreasonably in disposing of the rug.
21. Regarding the missing bird feeder and hummingbird figurines, the law of bailment applies. The law of bailment is about the obligations on one party to safeguard the possessions of another party. It is where the personal property of one person, the “bailor”, is held or stored by another person, the “bailee”. In this case, Mr. Walters was 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.
22. In contrast, a gratuitous bailment is where the bailer (here, Ms. D’Odorico) gets something for nothing. I say that because Mr. Walters was not paid to store Ms. D’Odorico’s property. Here, Ms. D’Odorico got to leave her possessions at Mr. Walters’ property for free, instead of having to take them with her while she was finding new housing. Mr. Walters, as bailee, received no benefit from Ms. D’Odorico leaving her possessions with him.
23. Even if I found Mr. Walters was a bailee for reward, 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 Mr. Walters is responsible for Ms. D’Odorico’s missing items (the bird feeder and

hummingbird figurines), I must determine whether Mr. Walters exercised the same care he would have exercised over his own property in the circumstances.

24. Here, I accept Mr. Walters moved Ms. D’Odorico’s belongings to his covered back deck for her to pick up when convenient. Given the nature of the possessions, largely household and personal items of relatively little monetary value, I find this was not unreasonable. Ms. D’Odorico had an acquaintance pick up the items alone, without her present to review the items. In these circumstances, I cannot find Mr. Walters was grossly negligent, or negligent at all, with respect to the missing items. Given all of the above, I dismiss Ms. D’Odorico’s claims.

25. I now turn to the counterclaim.

The Counterclaim

26. As noted above, Mr. Walters started a counterclaim against Ms. D’Odorico for unpaid rent (\$900), repayment of a loan (\$160), storage fees (\$225), and compensation for items he says Ms. D’Odorico took from his home. He values the missing items at \$4,425. As Mr. Walters has only claimed \$5,000 in compensation, I infer he has agreed to abandon the amount of his claims over \$5,000, the tribunal’s small claims monetary limit.

27. Ms. D’Odorico says she always paid her contribution to the home expenses, that she was never given a loan, and that she does not owe for storage fees. She further says she did not take any of Mr. Walters’ items.

Rent

28. The parties agreed that Ms. D’Odorico contributed “rent” money to Mr. Walters while they lived together, both before and after the relationship ended, but Ms. D’Odorico denies being a “renter”. The monthly amount appears to have increased from \$300 to \$400 at some point. Although Mr. Walters claims Ms. D’Odorico owes him for 3 months rent at \$300 per month, he has provided no evidence as to what months were unpaid. As noted above, Mr. Walters has the burden of proving, on a balance

of probabilities, that Ms. D'Odorico owes him for unpaid rent. I find he has not met that burden. As a result, I dismiss Mr. Walters' claim for unpaid rent.

Loan

29. Mr. Walters says he loaned Ms. D'Odorico \$160, so she could take her mother to the casino. Ms. D'Odorico denies this. Mr. Walters did not provide any details about when the loan was made or about any agreement with Ms. D'Odorico about repayment. I find Mr. Walters has not proven the loan was made, or if it was, that he is entitled to repayment. I dismiss Mr. Walters' claim for repayment of the loan.

Storage Fees

30. Mr. Walters claims for 3 months of storage fees at \$75 per month. He says this is because Ms. D'Odorico left her belongings at his house after she moved out in January 2018 until she had them picked up on March 10, 2018. I find he is not entitled to storage fees, as there is no evidence to support that he incurred any financial cost for such storage, which was on his covered back deck.

Missing Items

31. Mr. Walters says Ms. D'Odorico owes him for items she stole from his house, including:

- a. A Royal Dalton figurine,
- b. 4 gold rings,
- c. 6 steak knives with mother of pearl handles and a snake skin case,
- d. 5 Swarovski crystal figurines,
- e. 10 uncirculated \$2 bills,
- f. 10 uncirculated \$1 bills,

- g. Assorted American coins including \$1, \$2 and 50 cent coins, and
 - h. Approximately 45 collector Dinkey Toy vehicles from the 1950s and 1960s.
32. Ms. D’Odorico denies taking any of Mr. Walters’ items.
33. In support of his claim, Mr. Walters provided a statement from his ex-wife, MW, who said she confirms the items are missing. While I appreciate Mr. Walters is unable to locate the listed items, there is insufficient evidence that they were taken by Ms. D’Odorico. Additionally, apart from the missing currency, there is also insufficient evidence as to the value of the missing items. As a result, I dismiss Mr. Walters’ claim for reimbursement for stolen property.
34. Under section 49 of the CRTA, 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. In this case, as both parties were unsuccessful, I dismiss their respective claims for reimbursement of tribunal fees. Neither party made a claim for dispute-related expenses.

ORDER

35. I order Ms. D’Odorico’s claims, Mr. Walters’ counterclaims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair