



# Civil Resolution Tribunal

Date Issued: September 13, 2019

File: SC-2019-001354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gunn v. The Governing Council of the Salvation Army in Canada*,

2019 BCCRT 1082

BETWEEN:

SEAN GUNN

**APPLICANT**

AND:

THE GOVERNING COUNCIL OF THE SALVATION ARMY IN  
CANADA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. In the winter of 2018 the applicant, Sean Gunn, resided at Compass House, a shelter operated by the respondent, The Governing Council of the Salvation Army in Canada. The applicant says one of the shelter's staff members stole his clothing

after he left, and he wants the respondent to pay him \$5,000 for his lost clothing. The respondent says it was not responsible for the applicant's clothing during or after his stay at Compass House, none of its staff members stole his clothing, and it does not owe him anything.

2. The applicant is self-represented and the respondent is represented by Glenys Stevenson, its in-house counsel.

## **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* (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.
4. 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, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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, where permitted under 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.

## **ISSUE**

7. The issue in this dispute is whether the respondent is required to pay the applicant \$5,000 for allegedly stolen clothing.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.
10. The applicant moved into Compass House on February 9, 2018 and signed an Intake Assessment Interview Sheet on the same date. That document includes the shelter's rules and expectations for residents. One of these rules is that each resident is limited to bringing 2 bags of personal property into the shelter, and residents are responsible for their own property. The rule states that if a resident is asked to leave the shelter, any items left behind are not the shelter's responsibility,

but it will store such items for up to 2 weeks, after which point the items will be disposed of or given away. The last page of the document above the applicant's signature indicates that the applicant agreed to and understood the shelter's rules and expectations. The respondent says that in accordance with its standard intake procedures, one of the Compass House staff explained the shelter's rules to the applicant at the time he signed this document. The evidence also indicates that the applicant had stayed at Compass House 2 other times within the previous year and signed the same Intake Assessment Interview Sheet on both occasions.

11. The applicant does not dispute any of this. I am satisfied that he signed the intake document in February 2019 and that he knew or ought to have known of Compass House's rules at that time.
12. The parties agree that during his stay at Compass House in February and March 2018 the applicant shared a closet with another resident.
13. The parties agree that early on March 4, 2018 after an altercation with another resident, the applicant and the other resident were asked to leave Compass House, which they did. The applicant says he left a closet full of valuable clothing and was told that a staff member would bag his clothes and store them in a secure place.
14. The respondent says that over the next few days, in accordance with its standard procedure, staff entered the applicant's room and packed up both his and the other resident's belongings. The respondent says it was difficult to identify the owner of each item left behind, but its staff did their best to identify, tag, and store the applicant's belongings.
15. While the parties provided different versions of events, it is undisputed that at some point after March 4, 2018, the applicant returned to Compass House and received some of his belongings. The respondent says it returned all the belongings it had stored for the applicant, but the applicant says many of his expensive clothes were missing.

16. The applicant submitted a statement from T.D. who said he took over the applicant's room at Compass House after he left in March 2018. T.D. said he noticed the applicant's clothing at Compass House and asked the staff what they were planning to do with it. T.D. said one of the staff members, "Sheryl", threw the applicant's clothing outside in front of the shelter.
17. However, the applicant says that on one of the occasions he returned to Compass House to retrieve his clothing, he saw T.D. wearing his \$180 cargo pants. The applicant says he asked T.D. where he got the pants, and T.D. told him 2 female staff members allowed him and some other residents to take the applicant's clothes. The applicant says T.D. told him the 2 staff members instructed the residents to take whatever clothing remained to the bus depot across the street, which they did. I find the applicant's evidence is inconsistent with T.D.'s statement that "Sheryl" threw out the clothes.
18. The respondent submitted a statement from Cheryl E., a staff member, who said she did not steal the applicant's belongings, and that she made every effort to ensure his belongings were bagged, labelled, and placed in a locked storage area.
19. On balance, I find the respondent is not responsible for the applicant's clothes. Compass House's rules clearly state as such, and I have found the applicant signed an acknowledgement of the rules on 3 separate occasions in the year before the incident, including at the start of his latest residency in February 2018. I also find the applicant has failed to establish that any of Compass House's staff members stole his clothing.
20. Even if the respondent was responsible for the applicant's clothing, I find the applicant has failed to prove his losses. He submitted 2 undated photos of what he says are his belongings in his closet at Compass House. The photos show 5 boxes with unidentified contents, 1 pair of shoes, a sweater, 3 piles of folded clothes, and 2 jackets. The applicant says the photos show \$1,500 worth of new clothing, including a \$550 North Face jacket, tents worth \$150 each, and shirts worth

between \$50 and \$150 each. He provided no receipts or evidence of the cost of replacing these items, and the tents are not visible in the photos.

21. The respondent says the applicant has failed to prove his losses and relies on the tribunal's decision in *Khullar et al v. Instorage Inc.*, 2019 BCCRT 52. In that dispute the applicant claimed that someone stole items from their storage locker but did not provide particulars or the value of the specific items lost. The tribunal said the applicant's photos showing objects in suitcases and boxes were unhelpful in determining which items were stolen, or their value. While that decision is not binding on me I find its reasoning persuasive and I adopt it in this case. Quite apart from my conclusion that the respondent is not responsible for the applicant's clothes, I agree that the applicant has failed to prove his losses. I dismiss this claim.
22. Under section 49 of the CRTA 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 unsuccessful. The successful respondent did not claim any tribunal expenses or dispute-related fees.

## **ORDER**

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

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Sarah Orr, Tribunal Member