



Civil Resolution Tribunal

Date Issued: September 20, 2019

File: SC-2019-004112

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Linsley v. Linsley*, 2019 BCCRT 1114

BETWEEN:

TERESA LINSLEY

APPLICANT

AND:

MARK LINSLEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an iPhone 8 Plus cell phone (Phone). The applicant, Teresa Linsley, and the respondent, Mark Linsley, are siblings. The applicant says to help out her brother she provided him with the new Phone on her Rogers account. A

year later he left the account at which point the applicant says she told him he would need to pay off the device balance owing, which was \$425. He refused and says he mailed her the Phone back, but she says she never received it and questions whether he mailed it. She claims \$600, to replace the Phone.

2. The parties are each 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* (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. In the circumstances here, I find that I can fairly decide this dispute based on the written evidence and submissions before me.
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 do one or more of the following where permitted under section 118 of the CRTA: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondent failed to return the applicant's Phone to her, and if so, whether the applicant is entitled to \$600 in compensation.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision. In particular, I have not addressed the reasons for the deterioration of the parties' relationship as I find it is not necessary for my decision.
9. There is no dispute that the Phone was obtained by the applicant through her existing Rogers account, sometime in late 2017 or early 2018. The precise date is not in evidence and nothing turns on it. There is no written agreement in evidence about the respondent's use of the Phone. The applicant says the new Phone was worth \$980, which is undisputed and I accept that value. I note the respondent's December 15, 2018 receipt for \$1,062.88 for a new iPhone 8 Plus he bought, which I find confirms the Phone's original value of at least \$980.
10. The parties disagree about whether there was an agreement that the respondent would pay off Rogers for the Phone. I find it likely the parties' agreement was that the respondent would pay for the Phone, as otherwise the applicant would be left to pay for that Phone which she did not need and only got for the respondent to use. It is undisputed at the time she got the Phone, she got a new phone for herself as well. However, nothing turns on this because I find the respondent concedes that the Phone was not a gift to him, given that the respondent says he mailed it back to the applicant.

11. So, the first issue is whether the respondent reasonably fulfilled his responsibility for the Phone by sending it to the applicant by regular mail “sometime in January”. The applicant says she never received it. The respondent admits he used an address that did not include the applicant’s P.O. box, but says that when he contacted Canada Post after the fact, Canada Post told him that even without that it would still be “able to deliver after a lookup, failing that they would return it to me” at the return address. There is no evidence from Canada Post to support this submission.
12. The respondent also speculates that because the Phone had a crack in the back the applicant likely deemed it unsellable when she allegedly received it back in the mail and so made her claims in this proceeding. The respondent does not explain why he would not be responsible for the Phone having a crack in it, and the associated repair or replacement, given the Phone was new when he received it.
13. The law of what is known as ‘bailment’ applies here. The respondent had care and control of the Phone, which I find was for reward because he had the benefit of using the phone. Nothing turns on whether the applicant reasonably charged the respondent for his share of the Rogers bill, and I note the respondent did not file a counterclaim. In bailment, the responsibility for the Phone lay with the respondent. I find he was negligent in returning such a valuable item through the regular mail without any tracking, particularly since he admits he did not even use the applicant’s entire address. I find the respondent is liable for the Phone.
14. So, the next question is what are the applicant’s reasonable damages? In other words, what must the respondent pay her for the Phone? She asks for \$600, which is what she says she sold her own phone for recently. The Rogers “device savings recovery fee”, or payout for the Phone used by the respondent, was \$425, as shown on the Rogers November 15, 2018 bill in evidence.

15. The applicant did not provide any evidence to support her claim that she sold her phone for \$600, such as a receipt or record of the sale transaction. So, I find I have insufficient evidence of the \$600 value for the 1-year old Phone. I find the best evidence of the used Phone's value is the \$425 payout value, which is also what the applicant had offered the respondent to pay in order to keep the Phone. Therefore, I find the respondent must pay the applicant \$425.
16. The applicant is entitled to pre-judgment interest on the \$425 award, under the *Court Order Interest Act* (COIA), from November 15, 2018. This equals \$6.77.
17. Under the CRTA and the tribunal's rules, as the applicant was largely successful I find she is entitled to reimbursement of the \$125 she paid in tribunal fees. There were no dispute-related expenses claimed.

ORDERS

18. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$556.77, broken down as follows:
 - a. \$425 in damages,
 - b. \$6.77 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

21. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair