



Civil Resolution Tribunal

Date Issued: December 23, 2019

File: SC-2019-003097

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fraser v. McCollister*, 2019 BCCRT 1433

B E T W E E N :

CAITLIN FRASER

APPLICANT

A N D :

CALIB MCCOLLISTER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over personal belongings.

2. The applicant, Caitlin Fraser, says that she was lived with the respondent, Calib McCollister, in a relationship for less than a year. The applicant says that the respondent would not return her personal belongings after she moved out.
3. When she started the dispute on April 10, 2019, the applicant asked that the respondent return her personal belongings, which she valued at \$5,000. The applicant says the respondent returned some items in September 2019, but kept her 2 bookcases, a Dell computer, a computer cord, a Dutch oven, and a toaster. The applicant asks for reimbursement of these items, which I discuss more later.
4. The respondent says he returned all the applicant's belongings.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

8. 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 BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
9. 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.
10. 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

11. The issue in this dispute is whether the respondent has retained the applicant's personal belongings, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. Five months after this tribunal dispute commenced, the parties organized for the applicant's father to collect items she left at the respondent's home. On September 14, 2019, the respondent left the applicant's belongings outside his home and the

applicant's father picked them up the same day in his truck. The father then drove the truck full of belongings to the applicant's home.

14. According to the September 14, 2019 texts in evidence, the respondent kept bookshelves and said he would send money for them instead. The applicant says he then failed to pay, which I accept as there is no evidence of a payment.
15. The applicant says she noticed several other items missing from the truck load. On September 19, 2019, the father texted the respondent about the following items: "a toaster, mixing bowls, couch table, battery operated candles, Dutch oven, two jackets and other assorted clothing items." In reply, the respondent said he had found a computer cord, Dutch oven, mixer, toaster, books, but no clothes or candles. The respondent said he would make these items available for pick-up on "Wednesday", his day off work. The applicant says she never picked up the items. More on this below.
16. The respondent says the applicant has now "received all belongings that were hers". He says the applicant's "dad left some stuff and I did break a shelf of hers which I have stated I would pay for. All other stuff is gone". There is no statement in evidence from the applicant's dad.
17. The applicant asks for reimbursement rather than for the return of the items because she does not know if he has them and thinks it unfair for him to return items that are "used and in an unknown condition." However, since she was prepared to retrieve the items in September 2019, I do not find it would be unfair for the respondent to return them now, 3 months later, if he in fact retained them.
18. Although she does not describe it this way, the applicant's claim is what is known in law as detinue. The tort of detinue refers to continuous wrongful detention of personal property, with the general remedy being the return of the goods or market value damages. "Any retention of goods is actionable as detinue. To negate liability, the defendant must prove either that he is not detaining the goods or that, if he is detaining them, such detention is not against the will of the plaintiff", (see *The Law*

of Torts in Canada, 3rd ed. (Toronto: Thomson Reuters, 2010) at 138 cited in *Oh v City of Coquitlam*, 2018 BCSC 986, CanLII).

19. For an action in detinue, I find the applicant first needs to show that the respondent detained or is detaining the claimed items.
20. The Dell computer was not included in the items mentioned in her father's September 2019 text exchange with the respondent. A computer is a significant enough item that if the applicant believed the respondent had kept it, I would have expected her father to have mentioned it on her behalf. The father did not mention it. Apart from the applicant's own statement there is no other evidence about the status of the claimed computer. I find I have insufficient evidence that the respondent kept possession of a computer owned by the applicant. I dismiss the applicant's claim for the computer.
21. There is no dispute that the respondent had possession of the bookshelves. As mentioned, the respondent offered on September 14, 2019 to pay rather than return the bookshelves. In his submissions the respondent agrees to pay for the broken "shelf" but does not mention paying for the other bookshelf. Though there is little evidence, I am satisfied on the text messages that the respondent wrongfully kept possession of 2 bookshelves without paying for them. Since he agreed to pay, I find the respondent must reimburse the applicant for the bookshelves rather than return them.
22. The parties had no agreement on the bookshelves' replacement cost. The bookshelves were used and the applicant does not have her original receipts. The applicant submitted a photograph of 1 of her 2 bookshelves and a sale price tag for a replacement that is a different style and model to the ones claimed. The pictured bookshelf is more ornate. The full price is \$699.95, or \$397.00 on floor model clearance. The respondent does not dispute that the bookshelves are of similar value. On a judgment basis, I will allow a total of \$794.00, which I find is equivalent to the sale price for 2 floor model bookshelves.

23. As for the computer cord, Dutch oven and toaster, the respondent's position is that he returned them, and the applicant's position is that he did not. The applicant says she could not pick them up on the "one day" the respondent made available. However, the respondent's text does not say he only gave her only one day to pick them up. My reading of the text was that he offered to make them available on his day off work but not that he limited pick-up to that day. I find it hard to believe, without more explanation, that the applicant would not have communicated further about these claimed items if the respondent refused to make them available on any other day. There are also no texts about scheduling an alternate pick-up or evidence of unsuccessful attempts to retrieve the items. I find I am unable to prefer the applicant's version of events. I find applicant has not met the burden of proof that the respondent kept or detained these 3 items. I dismiss the applicant's claim for the computer cord, Dutch oven and toaster.
24. The applicant's own submissions suggest that she abandoned some of her other personal belongings at the respondent's home. Since the applicant made no specific request for additional items and provided no evidence on the value of any additional items, I have not considered any further items as part of her claim.
25. In the Dispute Response, the respondent had said that the applicant left him with "all the bills" and over \$5,800 in alleged damages to their leased home. The respondent filed a counterclaim, but then did not pay the fee. I considered whether the respondent is entitled to a set-off to the \$740.00 award. However, the applicant says she paid to fix the home and the respondent provided no evidence of loss. I find the respondent has not proven a set-off and therefore, I have applied none.

Interest, Dispute-Related Expenses, and Fees

26. The *Court Order Interest Act* applies to the tribunal. In a detinue claim, damages are generally assessed from date of trial (*Avco Financial Services v. Benoit*, 1999 BCPC 3 (CanLII)). However, the respondent agreed to pay for the bookshelves on September 14, 2019. I find payment was reasonably due the next day. I find the applicant is entitled to pre-judgement interest on the \$794.00, the bookshelves'

replacement cost, from September 15, 2019 to the date of this decision. This equals \$4.24.

27. 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. I see no reason in this case not to follow that general rule. I find the applicant was partially successful in this dispute. I find she is entitled to reimbursement of half the \$175 she paid in tribunal fees and half the \$11.97 she paid for registered mail. I find the expenses were reasonably incurred.

ORDERS

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$891.73, broken down as follows:

- a. \$794.00 as reimbursement for the bookshelves,
- b. \$4.24 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$93.49, for \$87.50 in tribunal fees and \$5.99 for dispute-related expenses.

29. The applicant is entitled to post-judgment interest, as applicable.

30. 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.

31. 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.

Trisha Apland, Tribunal Member