



Civil Resolution Tribunal

Date Issued: April 21, 2020

File: SC-2019-010940

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Durnin v. Holden*, 2020 BCCRT 429

BETWEEN:

GARY DURNIN

APPLICANT

AND:

DAVE HOLDEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Gary Durnin, says the respondent, Dave Holden, failed to return his personal possessions, or at least failed to make them reasonably available to him

for pick-up. The applicant claims \$5,000, which he says is the minimum value of his possessions.

2. The respondent says he repeatedly offered various arrangements so the applicant could pick up his possessions, but the applicant failed to come up with a suitable plan. The respondent denies he owes the applicant any money, and says that the applicant's possessions were of minimal value. However, he says there are some of the applicant's items still in his possession that the applicant can have if makes the appropriate arrangements.
3. The parties are each 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. Bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is to what extent, if any, is the applicant entitled to the claimed \$5,000 for personal possessions he says the respondent improperly withheld?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove his claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. As noted above, the applicant claims \$5,000 for loss of his personal belongings, which he describes only as “bed sofa tools clothing appliances”, and a “Raven Head wooden sculpture”.
11. The parties agree that on May 18, 2018 the applicant was removed from the respondent’s home by police, due to a conflict with a third party who resided in the home. The evidence indicates the applicant was later prohibited from returning unless with a police escort. I accept the respondent’s evidence that he was informed at some point in around September 2018 that he should avoid contact with the respondent, but that the respondent later confirmed with the police in October 2018 that this information was incorrect. I find nothing turns on that one-month gap in the respondent’s communications with the applicant.
12. The evidence, including the parties’ texts, shows that the respondent repeatedly tried to arrange for the applicant to retrieve his belongings without violating the prohibition order. The respondent says the applicant unreasonably failed to agree to

a storage pod or to attend with a trailer when he did pick up some items on June 23, 2018.

13. Later, on September 14 and 15, 2018, the applicant asked the respondent for his space heater, roasting pans, bike rack, “and anything else you want to get out of there”. The respondent replied on October 12, 2018 that he wanted the applicant to get everything at once, and that if the applicant rented a trailer the next day, the respondent would fill it. The applicant sent a hostile response, which appears to have prompted the respondent to ask him to get everything out, as at that point it was considered abandoned but the respondent had not disposed of any of it. After a further hostile exchange on October 12, the applicant asked for the return of his cats (that he had earlier asked the respondent to care for) and then said, “then we will never speak again”. The respondent immediately replied that he was fine with that, and “so all of your things that you left behind is abandoned”, and that he would arrange to return the cats that evening or the next morning. The applicant’s only response was about the cats’ return.
14. The respondent says around 9 months later, on June 17, 2019, his other roommate brought the applicant a “load of items”, including motocross gear, fenders, pedals, hockey jerseys, a life jacket, a hockey stick, and a box of “random stuff like TV cables”. I accept this evidence, which the applicant did not refute.
15. 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, the respondent 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.
16. In contrast, a gratuitous bailment is where the bailor (here, the applicant) gets something for nothing. I say that because the respondent was not paid to store the applicant’s property. Here, the applicant got to leave his possessions at the respondent’s property for free, instead of having to take them with him when he

moved out. The respondent, as bailee, received no benefit from the applicant leaving his possessions with him.

17. The standard is to determine liability based on whether a bailee 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 the respondent is responsible for the applicant's property, some of which may be missing at this point, I must determine whether the respondent exercised the same care he would have exercised over his own property in the circumstances. I find the evidence shows he clearly did so. He repeatedly made generous offers to help the applicant retrieve his property, such as offering to fill a trailer at no charge to the applicant. The applicant does not explain why he did not accept these reasonable offers to retrieve his belongings earlier, other than his apparently perceiving them as either inconvenient at the time or too expensive.
18. Based on the parties' text messages in evidence, I find the respondent took all reasonable steps in the circumstances to return the applicant's property to him. The applicant does not claim the return of any property, despite the respondent saying he still has "some items" in his possession that he is willing to return. I make no order for their return because the applicant did not claim that, and, because such an order amounts to injunctive relief (an order to do something), which in these circumstances the tribunal has no power to order under section 118 of the CRTA. In particular, while section 118 allows for relief from opposing claims over personal property, the respondent here makes no opposing claim over the applicant's possessions. Further, there is no specificity, in that neither party provided a sufficiently precise list of the items the respondent has retained.
19. On balance, by November 2018 I find the respondent was entitled to treat the applicant's remaining items in his possession as abandoned. I say this because despite repeated offers, the applicant failed for many months to retrieve his belongings.

20. Even if I had found the applicant was entitled to compensation for goods in the respondent's possession, the applicant failed to reasonably identify the items at issue or their value. The applicant says that he unfortunately has no receipts for his "lost belongings", but says he can provide bank statements although those "do not include the product purchased". Yet, apart from this statement the applicant provided no evidence to support his claim and simply submits that he "can say my lost belongings" exceed \$5,000. I find his damages unproven, both in terms of the items lost and their value.

21. Given my conclusions above, I find the applicant's claims must be dismissed.

22. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful I find he is not entitled to be reimbursed for tribunal fees or dispute-related expenses. The successful respondent did not pay any fees or claim expenses.

ORDER

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

Shelley Lopez, Vice Chair