



Civil Resolution Tribunal

Date Issued: May 19, 2020

File: SC-2019-010776

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kozak v. Remi Realty Inc.*, 2020 BCCRT 544

BETWEEN:

JAMIE KOZAK

APPLICANT

AND:

REMI REALTY INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This claim is about theft from a strata corporation property (strata). The applicant, Jamie Kozak, is a resident of the strata that is managed by the respondent, REMI Realty Inc. The applicant says thieves stole ski gear from his strata storage locker on July 10, 2019. The applicant claims the respondent is responsible for this loss because the respondent did not provide adequate security. The applicant claims the

respondent breached a fiduciary duty to the applicant and the respondent was negligent. The applicant claims damages of \$1,590 for the loss of his ski gear.

2. The respondent denies this claim. The respondent argues that they provided adequate property management services. The respondent also says the applicant did not prove his losses.
3. The applicant is self-represented. The respondent is represented by a business representative.

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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided 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.

ISSUES

8. The issues in this dispute are:
 - a. Did the respondent breach a fiduciary duty to the applicant? If so, what is the remedy?
 - b. Did the respondent negligently fail to protect the strata's security leading to the theft of the applicant's property? If so, what is the remedy?

EVIDENCE AND ANALYSIS

9. In civil proceedings such as these, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The applicant argues that the respondent owed him a fiduciary duty as a property manager. I disagree. Section 31 of the *Strata Property Act* (SPA) imposes a duty of good faith on a strata council. However, the SPA does not impose this duty on property managers such as the respondent. I find that the respondent did not owe a fiduciary duty to the applicant.
11. The applicant also argues that the respondent was negligent. The applicant claims the respondent did not adequately protect his stored possessions from theft. To prove negligence, the applicant must show that the respondent owed the applicant a duty of care, the respondent breached the standard of care, the applicant

sustained damage, and the respondent's breach caused the damage (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 33).

12. Section 3(1) of the *Occupier's Liability Act* (OLA) says occupiers have a duty of care to protect possessions on their premises. The OLA defines occupiers as persons having responsibility and control of the premises.
13. The BC Supreme Court addressed a similar situation in *Robertson v. Stang*, 1997 CanLII 2122 (BC SC). In *Robertson*, an apartment building tenant stored possessions in a building storage room. Thieves stole some of the possessions and the tenant claimed that the building managers were responsible for the loss. The court said the building managers were occupiers of the apartment building under the OLA. As such, the court in *Robertson* said the building managers had a duty of care under the OLA to protect a tenant's possessions stored at the building from theft.
14. Based on the reasoning in *Robertson*, I find that the respondent, as a property manager of the strata, was an occupier under the OLA. I find that the respondent owed a duty of care to protect the applicant's possessions under the OLA.
15. So, did the respondent satisfy the standard of care?
16. Section 3(1) of the OLA says the respondent has a duty to take reasonable care in all the circumstances to ensure that the applicant's possessions would be reasonably safe while stored on the premises. In *Robertson*, the court says the standard of care requires reasonableness.
17. On the balance, I find that the respondent failed to meet the standard of care.
18. The applicant argues that the respondent should have improved security and warned the residents after multiple previous break-ins. However, the parties disagree about the strata's break-in history. The applicant says there were break-ins at the strata in April 2019, June 2019 and July 2019. The respondent says the first break-in occurred in July 2019.

19. The locksmith records show that strata door handles were damaged on April 18, 2019 and June 17, 2019. Based on the locksmith records, I am satisfied that there were break-ins at the strata in April 2019 and June 2019.
20. Based on the locksmith records, I find that respondent quickly repaired the broken door locks after the April 2019 and June 2019 break-ins. However, it is undisputed that the respondent did not warn the strata residents of the April 2019 and June 2019 break-ins.
21. Both parties were present at a strata council meeting and the strata's Annual General Meeting on July 2, 2019. The applicant says the respondent did not advise the strata council or the strata owners of the previous break-ins at either meeting. The respondent does not dispute this. The minutes from both meetings do not mention previous break-ins. Based on the applicant's undisputed evidence and the meeting minutes, I find that the respondent did not inform the strata or the residents of the April 2019 and June 2019 break-ins.
22. I find that the respondent failed to meet the standard of care by not notifying the strata council or the residents of the April 2019 and June 2019 break-ins. I find that the standard of reasonable care required the respondent to notify the residents of break-ins so they could protect their possessions from further crime. I find the respondent's failure to warn the applicant of the break-ins to be unreasonable. While I have considered the various security improvements provided by the respondent, I find that the respondent breached the standard of care by failing to notify the applicant of the April 2019 and June 2019 break-ins.
23. However, even though I find that the respondent failed to satisfy the standard of care to protect the applicant's property, I find the applicant has not proved his damages.
24. The applicant says thieves stole a duffle bag containing ski clothing and gear from his strata locker. The applicant says the stolen items originally cost over \$2,000, and that he spent \$1,590 to replace them. The applicant says he did not make an

insurance claim because the \$1,000 insurance deductible plus future insurance premium increases would cost more than his loss.

25. However, I am not satisfied that the applicant had ski gear stolen from the locker. Other than his submissions, the applicant provided no evidence proving his loss or the replacement value of the missing items. There are no receipts or quotes for the replacement of his ski gear. I find the applicant has not proved the value of the missing items. The applicant has the burden of proving the amount of his damages. As the applicant has failed to prove his claimed damages, I dismiss his claim.
26. 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. Since the applicant was unsuccessful, I dismiss his claim for tribunal fees. There were no dispute-related expenses claimed.

ORDER

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

Richard McAndrew, Tribunal Member