Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sherevkulov v. Walji*, 2020 BCCRT 590

B E T W E E N :

DMITRY SHEREVKULOV

APPLICANT

A N D :

RAIHAAN WALJI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about the removal of contents from a storage locker in a strata apartment building. The applicant, Dmitry Sherevkulov, says that another strata lot owner, the respondent Raihaan Walji, negligently removed and disposed of the applicant's locker contents.

2. The respondent says he was not negligent, as he took appropriate steps to determine who owned the locker's contents. Further, he says the locker belonged to him and not the applicant, and so he was entitled to remove and dispose of the contents.

3. The parties are both 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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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.

8. I note that this dispute comes before me for decision on its merits after the respondent successfully applied to cancel an earlier default decision, on the basis that he never received notice of the applicant's dispute.

ISSUE

9. The issue in this dispute is whether the respondent is legally liable for removing and disposing of the applicant's belongings from the locker and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. While I have considered all the information provided by the parties, I will refer to only what is necessary to provide context to my decision.

11. The applicant resides in an apartment building and says he was told when he moved in that locker #42 was assigned to his unit. He did not provide any evidence about who told him locker #42 was his. The applicant used locker #42 for 3 years before the respondent purchased a unit in the building. The respondent purchased his unit from N.F., who advised him that locker #42 was 1 of 3 lockers assigned to his unit. The Storage Area Assignment in evidence confirms that locker #42 is assigned to the respondent's unit.

12. The respondent says that his lockers were not empty when he moved in, so his father contacted the building's property manager for direction. The email correspondence between the respondent's father and the property manager shows that the property manager said N.F. should have cleaned out the lockers before moving, and the respondent could either contact N.F.'s realtor about it or hire a junk removal company to have the items removed. When asked whether a notice should be posted in the building to advise residents that the lockers were going to be emptied of their contents, the property manager said that only the strata council could post a notice. Further, the property manager confirmed that the lockers' contents belonged to N.F. and they had been there for a long time.

13. The respondent says he then contacted N.F. who confirmed he had left items in the lockers but did not need them, and the respondent was free to dispose of the items.

The respondent does not dispute that he cut the lock off locker #42 and disposed of its contents. While the applicant argues it is unlikely the respondent would have borne the cost of hiring a junk removal company if he knew the lockers' contents belonged to N.F., there is no evidence before me about how the respondent disposed of the lockers' contents or that he incurred any cost to do so. I find the respondent reasonably believed locker #42's contents belonged to N.F.

14. On August 31, 2019, the applicant discovered that his belongings had been removed from locker #42 and that it contained someone else's belongings with a new lock on the door. The applicant reported his belongings stolen to the police. The building's property manager later informed the applicant that the locker assigned to his unit was, in fact, locker #40 and he had been using the wrong locker for 3 years. The police file was then closed.

15. The applicant submits that the respondent did not make reasonable efforts to find the owner of the items in locker #42 before disposing of them. He says the respondent should have informed the strata council of the issue and requested a notice be posted in the building to try and find the owner of the belongings.

16. I turn to the relevant law. The applicant has framed his claim against the respondent in negligence. To establish his claim in negligence, the applicant must show the respondent owed him a duty of care, that the respondent breached the applicable standard of care, that the loss or damage was reasonably foreseeable, and that the respondent's failure to meet the standard caused the applicant's loss.

17. Here, I am not satisfied that the respondent owed the applicant a duty of care. Given the information he had, the respondent did not and could not have known that the applicant, or any other resident in the building, had been provided the incorrect locker number and was storing his belongings in locker #42 in error. The respondent had no reason to believe the contents of locker #42 belonged to anyone other than N.F.

18. Even if the respondent did owe the applicant a duty of care, I find that the applicant did not breach the standard of care of a new resident in determining the appropriate course of action when faced with a locker containing another's belongings. The respondent contacted both the building's property manager and N.F. and was told that the contents of locker #42 were N.F.'s and he was entitled to dispose of them. This is confirmed in a signed statement of N.F. in evidence, which also states that N.F. did not realize that the applicant had been storing items in one of his lockers.

19. I find that the standard of care did not require the respondent to disregard the property manager's and N.F.'s advice in favour of asking the strata council to post a notice in the building to determine whether the contents of locker #42 belonged to another resident in the building.

20. In reply submissions, the applicant argues a reasonable person would have done more to confirm whether N.F. was the owner of the locker's content because the obvious value of the goods was over $1,000. The applicant's assertion is the only evidence of the goods' value as most of the items appear to be contained in boxes, suitcases and bags. There is no evidence that the respondent opened these containers or otherwise confirmed their contents to evaluate the value of the locker's contents before disposing of them. I find this submission is insufficient to overcome the reasonableness of the respondent's belief that the locker's contents belonged to N.F.

21. I find that the applicant has not proven the respondent was negligent.

22. The applicant's claim against the respondent is arguably also one of conversion, although he did not expressly rely on conversion. The tort of conversion involves wrongfully holding on to another's property and claiming title or ownership of that property. According to *Li v. Li*, 2017 BCSC 1312, the applicant must prove:

    a. a wrongful act by the respondent involving the applicant's goods,

    b. that the act consisted of handling, disposing, or destroying the goods, and

c. the respondent's actions effectively or intentionally interfered with, or denied, the applicant's right or title to the goods.

23. In this case, the focus is on whether the respondent's action in disposing of the applicant's belongings in locker #42 was wrongful. It is undisputed that the locker was assigned to the exclusive use of the respondent's unit in the building. When the respondent purchased his unit, he assumed the right to exclusive use of locker #42. N.F. was the previous owner of the unit with exclusive use of the locker and he told the respondent the locker's contents were unwanted. Because no one else had permission to use the locker, I find the respondent was entitled to cut any existing lock and remove the items inside. Therefore, the respondent's actions were not wrongful.

24. The applicant says that on the day he discovered his belongings were gone, there were at least 2 vacant storage lockers that could have been used to relocate his belongings. There is no evidence of the date that the respondent emptied locker #42, or whether there were any empty storage lockers on that day. In any event, I find this factor is not relevant because of my finding that the applicant reasonably believed the locker's contents belonged to N.F. and there was no reason for him to keep the items.

25. Given my conclusions that the applicant has failed to make out either negligence or conversion, I find it unnecessary to determine the applicant's damages claims.

26. I dismiss the applicant's claims. As the applicant was unsuccessful in this dispute, in accordance with the CRTA and the tribunal rules I find he is therefore not entitled to reimbursement of tribunal fees.

27. The respondent requests reimbursement of a $50 dispute-related expense, which he paid to request the cancellation of the default judgment the applicant obtained. I find this request is reasonable because the applicant did not provide the respondent's correct address for the Dispute Notice so the respondent was in fact not served and did not know there was a tribunal dispute to which he had to

respond. Therefore, the applicant is responsible for the default judgment being issued and for the respondent having to apply for its cancellation.

28. 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. As the applicant was unsuccessful, I find he is not entitled to reimbursement of tribunal fees.

ORDERS

29. I dismiss the applicant's claims.

30. Within 14 days of this decision, I order the applicant to reimburse the respondent $50 in paid tribunal fees. The respondent is entitled to post-judgment interest on the $50.

31. 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.

32. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

33. 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.

Kristin Gardner, Tribunal Member