



Civil Resolution Tribunal

Date Issued: June 16, 2020

File: SC-2020-000345

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sasyniuk v. 2992 Pinegrove Street Properties Limited Partnership*,
2020 BCCRT 668

B E T W E E N :

STACEY SASYNIUK

APPLICANT

A N D :

2992 PINEGROVE STREET PROPERTIES LIMITED PARTNERSHIP
and MARCUS LOWE

RESPONDENTS

A N D :

STACEY SASYNIUK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about storage of household goods. The applicant and respondent by counterclaim, Stacey Sasyniuk, rented a storage locker from the respondent, 2992 Pinegrove Street Properties Limited Partnership, doing business as Pockit Self Storage (Pockit). The respondent and applicant by counterclaim, Marcus Lowe, is an employee or principal of Pockit
2. Ms. Sasyniuk says mice infested her storage locker and damaged her belongings. She claims \$4,623.55 in damages for the replacement value of her stored furniture and other items, and her time spent travelling to her storage locker and cleaning and moving her belongings. The respondents say that under Ms. Sasyniuk's rental contract, they are not responsible for her stored items, including any mouse damage, and say they owe nothing.
3. Mr. Lowe says Pockit helped Ms. Sasyniuk clean up the mouse damage and relocate her goods to a different locker at the same facility. Mr. Lowe counterclaims for \$5,000 in cleaning costs, staff time, disposal costs, additional storage locker rental fees, and moving costs, which includes \$2,500 for "public defamation." Ms. Sasyniuk says she did not agree to pay those costs, and that not all of that work was performed. She denies defaming anyone.
4. Ms. Sasyniuk is self-represented in this dispute. Mr. Lowe represents both himself and Pockit.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.

6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves a “she said, they said” scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. I find I can properly assess and weigh the written evidence and submissions before me, keeping in mind that the CRT’s mandate includes proportionality and a speedy resolution of disputes. Therefore, I find that an oral hearing is not necessary, and I decided to hear this dispute through written submissions.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT’s jurisdiction. A dispute that involves some issues that are outside the CRT’s jurisdiction may be amended to remove those issues.
10. As referenced above, Mr. Lowe says Ms. Sasyniuk posted untruths in online reviews and social media posts. His counterclaims include \$2,500 in damages for defamation and resulting lost business opportunities. However, section 119(a) of the CRTA says the CRT does not have small claims jurisdiction over defamation. So, I

make no findings about these allegations, and I refuse to resolve Mr. Lowe's defamation claims under section 10 of the CRTA.

ISSUES

11. The issues in this dispute are:

- a. Are the respondents responsible for Ms. Sasyniuk's mouse-damaged items, and if so, how much do they owe her?
- b. Is Ms. Sasyniuk responsible for cleaning, moving, disposal, and additional locker rental costs, and if so, how much does she owe Mr. Lowe?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Ms. Sasyniuk must prove her claims on a balance of probabilities. Mr. Lowe must prove his counterclaims to the same standard. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Are the respondents responsible for Ms. Sasyniuk's mouse-damaged items, and if so, how much do they owe her?

13. The undisputed evidence is that Ms. Sasyniuk rented a storage locker from Trans-Canada Self Storage Ltd. (Trans-Canada) on June 29, 2018. Trans-Canada then sold its storage locker business to Pockit. The parties do not dispute that Trans-Canada transferred Ms. Sasyniuk's storage contract to Pockit in 2019, or that Pockit assumed all of Trans-Canada's rights and responsibilities under the contract. Although there are no agreements in evidence about the business sale or contract transfer, on balance I find that the June 29, 2018 contract is enforceable between Ms. Sasyniuk and Pockit.

14. Ms. Sasyniuk says she does not live in Canada, and only occasionally visits the storage locker, for short periods. She says that in October 2019, after an absence of

at least several months, she visited the storage locker and discovered that mice had been among her stored items, and had soiled and damaged several of them. She says a neighbouring locker or other storage facility areas may have had a mouse infestation, and the mice in her locker were not her fault. The respondents say Pockit has an effective rodent control program, and say that Ms. Sasyniuk may have had food in her locker, although I find there is no direct proof of that. I find that the evidence fails to show why there were mice in Ms. Sasyniuk's locker, or that there was a broader mouse infestation at the facility around the same time.

15. Ms. Sasyniuk says Pockit advertised that it would keep renters' belongings safe, and she provided examples of its advertisements. I find that Pockit's advertisements are not binding guarantees that Ms. Sasyniuk's stored goods would not be damaged. Rather, I find that the storage contract governs their storage relationship.
16. Ms. Sasyniuk also says that storing her goods at Pockit was like a neighbour borrowing an item, where one expected the item to be returned in good condition or replaced. I find Ms. Sasyniuk is alleging that she gave possession of her goods to the respondents, which made them responsible for the goods. The legal term for this is bailment.
17. However, the June 29, 2018 contract says that Pockit was not a bailee or warehouse service. The contract says Pockit only provided space to Ms. Sasyniuk to store unidentified goods at her own risk, and that Pockit had no obligation to care for or preserve those goods. Further, the contract said, in emphasized text, that Pockit was not liable for any loss or damage to anything stored in the storage locker. The contract went on to say that Pockit and its agents and employees were not liable for any loss, destruction, or damage to any stored goods, for any cause, even if the loss or damage was caused by the negligence or default of Pockit and its agents and employees. Further, under the contract, Ms. Sasyniuk was solely responsible for providing insurance for the storage locker and its contents.
18. Ms. Sasyniuk signed the 2-page contract and initialed it in several places. I find that the terms saying that Pockit was not responsible for damage to Ms. Sasyniuk's

goods were clear, were sufficiently brought to her attention, and are enforceable. Under the contract, I find that Pockit did not have bailment or possession of Ms. Sasyniuk's stored goods, and that it is not responsible for those goods under the contract. So, I find Pockit is not liable for mouse damage to Ms. Sasyniuk's goods, or for Ms. Sasyniuk's time and travel spent dealing with the mouse issues.

19. Ms. Sasyniuk also says that Pockit had a tenant protection program for stored items. Ms. Sasyniuk initialed the parties' contract in a space provided, for an extra-charge "Tenant Protection Package." She did not initial a space indicating she had her own insurance policy. However, the evidence does not show that Ms. Sasyniuk ever paid an extra charge for a Tenant Protection Package. Further, the evidence does not include a description of the Tenant Protection Package, such as what coverage is included or excluded. So, I find that Ms. Sasyniuk has not met her burden of proving that Pockit accepted liability for mouse damage under a Tenant Protection Package.
20. Turning to Mr. Lowe, I find he is not a party to the storage contract, which is between Ms. Sasyniuk and Pockit. On the evidence before me, I find that Mr. Lowe was acting as an employee or representative of Pockit while dealing with Ms. Sasyniuk's goods and the mouse situation, and was not acting as an individual. So, I find that Mr. Lowe is not personally responsible for any mouse damage to Ms. Sasyniuk's stored goods.
21. I dismiss the applicants' claims against Pockit and Mr. Lowe.

Is Ms. Sasyniuk responsible for cleaning, moving, disposal, and additional locker rental costs, and if so, how much does she owe Mr. Lowe?

22. After discovering evidence of mice in October 2019, Ms. Sasyniuk visited the storage locker a few more times in November and December 2019. Ms. Sasyniuk says she was able to rearrange more of her belongings each visit, which revealed further mouse damage that she documented in photos. I find the photos show

extensive mouse droppings and soiling, as well as torn and shredded paper and cloth.

23. Email correspondence in evidence shows that the parties discussed the mouse situation, and that Pockit offered to help Ms. Sasyniuk clean her belongings and move them to a new locker. Because I refused to resolve Mr. Lowe's counterclaim for \$2,500 in defamation damages, that leaves a counterclaim amount of \$2,500 for the remaining cleaning costs, staff time, disposal costs, additional storage locker rental, and costs of moving goods to the new locker.
24. Does Ms. Sasyniuk owe Mr. Lowe for these services? As noted above, Mr. Lowe was acting as a representative of Pockit in his dealings with Ms. Sasyniuk, not as an individual. I find there is no evidence that Mr. Lowe paid any costs out of his own pocket, or that Ms. Sasyniuk otherwise owes him anything personally. So, I dismiss Mr. Lowe's counterclaims against Ms. Sasyniuk. Pockit did not file any counterclaims against Ms. Sasyniuk, so I find the question of whether she owes Pockit anything is not before me in this dispute.
25. Further, even if Mr. Lowe had acted in his personal capacity when dealing with Ms. Sasyniuk's storage situation, which I find he did not, I would have dismissed his counterclaims for the following reasons.
26. Mr. Lowe counterclaims for \$150 in staff labour, and \$250 in anticipated disposal costs for items left in Ms. Sasyniuk's old locker. I find there is insufficient evidence showing what work Pockit staff performed on Ms. Sasyniuk's rented locker or goods, how long they worked, or what their wage rates were. There is also no proof that Pockit paid any disposal costs. So, I would dismiss the claim for staff labour and disposal costs.
27. Mr. Lowe says Ms. Sasyniuk continues to store items in her old locker, and counterclaims for \$1,365 in rental fees for January 2020 to April 2020. A transfer status receipt shows Ms. Sasyniuk moved from her old locker to the new one on January 8, 2020. there are no invoices or other evidence showing that Pockit

invoiced Ms. Sasyniuk anything for the old locker, or for any locker. Further, while Pockit claims it has been unable to re-rent the old locker, it said in a January 20, 2020 email that it would dispose of the old locker items by the following day if Ms. Sasyniuk did not re-rent it. But Pockit does not explain why it apparently failed to dispose of the items and rent the old locker to someone else. So, I would dismiss the claim for additional locker rental fees, because I find there is insufficient proof that Ms. Sasyniuk owes anything.

28. In a January 11, 2020 email, Pockit confirmed that it had Ms. Sasyniuk's "couch and several chairs professionally cleaned at our expense". I find this means Pockit agreed to pay for that cleaning itself, and not on behalf of Ms. Sasyniuk. So, I would dismiss the claim for cleaning expenses.

29. Turning to moving expenses, a January 2, 2020 email says that Pockit hired professional movers to move Ms. Sasyniuk's goods from her old locker to her new locker on January 6, 2020. The transfer status receipt says the move occurred on January 8, 2020. However, the mover receipt in evidence is for a February 6, 2020 move of items "in storage," without further description. The mover receipt does not say what was moved, and does not identify the locker numbers or locations the items were moved between. I would dismiss the claim for moving expenses, because the respondents failed to prove the expenses.

30. For the above reasons, I dismiss Mr. Lowe's counterclaims.

CRT FEES AND EXPENSES

31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason to depart from that general rule here. Both Mr. Lowe and Ms. Sasyniuk claim out-of-pocket CRT dispute-related expenses, but the only proof of these was Ms. Sasyniuk's corporate search receipt. They both also claim for their time spent on this dispute, but the CRT does not generally compensate parties for their time, and I find the circumstances of this

dispute are not extraordinary. Further, neither Ms. Sasyniuk nor Mr. Lowe was successful in their claims, so I order no reimbursement of their CRT fees or CRT dispute-related expenses. Pockit paid no fees and claimed no expenses.

ORDER

32. I dismiss Ms. Sasyniuk's claims, Mr. Lowe's counterclaims, and this dispute.

Chad McCarthy, Tribunal Member