



Civil Resolution Tribunal

Date Issued: February 19, 2021

File: SC-2020-004884

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cook v. Tymusko*, 2021 BCCRT 192

B E T W E E N :

CHRISTOPHER COOK

APPLICANT

A N D :

AMANDA TYMUSKO also known as AMANDA MCKAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about whether the respondent, Amanda Tymusko also known as Amanda Mckay, stole personal property from the applicant, Christopher Cook. Mr. Cook says the parties previously lived together, and 3 months after Ms. Tymusko moved out, she returned to take several items. He seeks an order for the return of a

television, a Dyson vacuum, bike gear, a Roomba vacuum, clothing, perfume, and cologne.

2. Ms. Tymusko disagrees and says she returned his belongings in the summer of 2019.
3. The parties are self-represented.
4. For the reasons that follow, I find Mr. Cook has not proven his claims. I dismiss his claims and this dispute.
5. This dispute is related to 2 linked disputes numbered SC-2020-004885 and SC-2020-004937. I have written a separate decision for those disputes because the parties are different. My findings in this decision are based on the evidence and submissions in the dispute before me.

JURISDICTION AND PROCEDURE

6. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
8. Section 42 of the CRTA says 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.

9. 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.
10. It is undisputed that the parties were in a relationship for a year. There is no indication that they were married or lived together for at least 2 years. As such, I find that the personal property at issue is not family property under the *Family Law Act*. So, I find the CRT has jurisdiction over this dispute.

ISSUE

11. The issue in this dispute is whether Ms. Tymusko stole Mr. Cook's personal property, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Cook must prove his claims on a balance of probabilities. Both parties did not provide any evidence or submissions. CRT staff notes show that they reminded the parties to do so in October and November 2020, but the parties did not respond. I will therefore refer to the statements in the Dispute Notice and Ms. Tymusko's Dispute Response filed at the outset of this proceeding, but only as necessary to explain my decision.
13. The background facts are undisputed. The parties previously lived together at Mr. Cook's residence. The relationship ended and Ms. Tymusko moved out. She left some of her belongings behind. I infer that this happened in March 2019, as Mr. Cook says Ms. Tymusko left him 3 months before he discovered the alleged theft in June 2019.
14. Ms. Tymusko says that about 3 months after the parties' relationship ended, she returned to Mr. Cook's residence while he was out. Another person, Alicia Hill,

accompanied Ms. Tymusko. Ms. Hill and Mr. Cook were formerly married. She is the respondent in disputes numbered SC-2020-004885 and SC-2020-004937, referred to earlier.

15. The parties diverge on what happened next. Ms. Tymusko says she took both her belongings and some of Mr. Cook's belongings to safeguard them from Ms. Hill and Mr. Cook's current girlfriend, SLC. Ms. Tymusko says she subsequently returned all his belongings in the summer of 2019. Contrary to this, Mr. Cook wrote in his application for dispute resolution that Ms. Tymusko took some of his possessions and only returned a few of his clothes.
16. Ms. Tymusko says that at some point she returned to Mr. Cook's residence a second time for the rest of her belongings. She says Ms. Hill, SLC, and SLC's sister were present. She alleges that Ms. Hill and SLC took some of Mr. Cook's possessions at the time. Mr. Cook did not provide any arguments about this second visit.
17. Mr. Cook says the police subsequently charged Ms. Tymusko and Ms. Hill, but this is unproven by any evidence.
18. In summary, Mr. Cook says Ms. Tymusko stole his possessions. Ms. Tymusko says she took only her belongings and some of Mr. Cook's items, which she has since returned.
19. Which version of events is accurate? Both parties chose not to provide evidence or further submissions to support their arguments. I find that I am left with an evidentiary tie between the parties. As stated above, Mr. Cook bears the burden to prove his claims on a balance of probabilities. Given this, I cannot conclude that Ms. Tymusko stole Mr. Cook's items. I must therefore dismiss Mr. Cook's claims.
20. 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 in this case not to follow that general rule.

21. Mr. Cook was unsuccessful. However, no parties paid any CRT fees or claimed any dispute-related expenses. As such, I do not order reimbursement for any of the parties.

ORDER

22. I dismiss Mr. Cook's claims and this dispute.

David Jiang, Tribunal Member