



Civil Resolution Tribunal

Date Issued: May 17, 2021

File: SC-2021-003791

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tomin v. Sales*, 2021 BCCRT 526

B E T W E E N :

LAURIE TOMIN

APPLICANT

A N D :

ROBIN SALES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Laurie Tomin owns one strata lot in a strata duplex. At the time of the events that are the subject of this dispute, the respondent Robin Sales owned the only other strata lot in the same strata corporation (strata).

2. Ms. Tomin says that Mr. Sales hired people to move her personal belongings out of a carport on common property (CP) to an uncovered area without her permission, in May 2020. Although her belongings were moved back into the carport the same day, Ms. Tomin says they were damaged.
3. Ms. Tomin also says her belongings suffering water damage in summer 2020, as a result of Mr. Sales' negligence. Ms. Tomin claims \$5,000 for damage to her belongings.
4. Mr. Sales denies liability for any damage to Ms. Tomin's belongings. If her belongings were damaged, Mr. Sales says it happened because Ms. Tomin chose to store them in a carport she knew was in disrepair. Mr. Sales asks me to dismiss the dispute.
5. Originally, Ms. Tomin brought several claims against Mr. Sales under the Civil Resolution Tribunal (CRT)'s strata property jurisdiction. One of these claims was for damage to her personal belongings. After reviewing submissions from both parties, I decided that Ms. Tomin's claim for damage to her belongings did not fall within the CRT's strata jurisdiction. Ms. Tomin agreed to abandon the amount of her claim over \$5,000, and I directed that Ms. Tomin's claim be moved into this separate small claims dispute, which I decide below. I decided the remaining strata claims in the original dispute in separate reasons.
6. For the reasons given below, I dismiss Ms. Tomin's claim because she did not prove that Mr. Sales was liable for \$5,000 in damage to her belongings.
7. Ms. Tomin represents herself. Mr. Sales is represented by his separated spouse, ML.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. In particular, the CRT may make such an order on its own initiative, on request by a party, or on recommendation by a CRT case manager (also known as a CRT facilitator).
12. 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.
13. 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.

ISSUE

14. The issue in this dispute is whether Mr. Sales' alleged wrongful actions caused damage of \$5,000 to Ms. Tomin's belongings.

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant Ms. Tomin must prove her claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.
16. The strata has an open carport situated on CP. Based on photographs provided by Mr. Sales, I find that by late May 2020, the north side of the shared carport was full of items stacked together. The carport was open to the air at the front and the roof did not entirely cover the items in the carport. A pile of something under a tarp was situated in front the carport. I find that the items in the carport and under the tarp belonged to Ms. Tomin.
17. The parties agree that, on May 28, 2020, Mr. Sales' movers moved some of Ms. Tomin's belongings out of the carport. It is undisputed that Ms. Tomin did not agree to this in advance. Based on an RCMP "general occurrence report", I find that when she discovered that her belongings were being moved, Ms. Tomin called the RCMP.
18. When the RCMP constable attended, the parties agreed that the movers would put Ms. Tomin's belongings back. Ms. Tomin submits that the movers replaced her belongings "without care". One of the items that was moved was some wood. Based on the RCMP report I find that Ms. Tomin's belongings were returned to the carport or under tarps in a manner she found satisfactory, because she attended while they were replaced and did not rearrange them afterwards.
19. Ms. Tomin also submitted that she had placed "mint condition" wood in the carport, after which it suffered mold and water damage because of Mr. Sales. Photographs of the damaged wood show mold on some pieces but not others.
20. Ms. Tomin says that she stored the wood indoors until May 2020, when she chose to move it. At the same time, Ms. Tomin admits that she knew the carport to be "in a state of dismal disrepair" from the time she purchased her strata lot in December 2019. In part of her submission, Ms. Tomin writes that her belongings were destroyed by the 2020 summer rains. Photographs of the carport and tarp show that the wood

and other belongings were probably not adequately insulated from the elements when they were stored on CP or in the carport by Ms. Tomin.

21. I find that she was aware of the risk of dampness and damage to her wood and belongings that would likely occur when she decided to store them in the outdoor, open carport. I find Ms. Tomin has not proven the mold or other damage to the wood was caused by Mr. Sales or his movers.
22. Ms. Tomin submits either that Mr. Sales damaged the belongings when they were wrongfully moved, or that he negligently obstructed the repair and maintenance of the carport causing damage to her belongings.
23. To the extent that Ms. Tomin's claim is for damaged caused by Mr. Sales' movers, I have considered the law of the tort of conversion. Conversion is where one person wrongfully handles, disposes of or destroys another person's personal property in a way that is inconsistent with the owner's rights: see, for example, *Li v. Li*, 2017 BCSC 1312 at paragraph 213, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 at paragraph 104. The general remedy for conversion is the return of the asset or market value damages.
24. I find that Mr. Sales, through his movers, handled Ms. Tomin's belongings without permission. However, I have found that her belongings were immediately returned. For this reason, and because Ms. Tomin did not prove her belongings were damaged by being moved, I dismiss her claim in conversion.
25. I have also considered whether Ms. Tomin has proven a claim in negligence. To establish a negligence claim against Mr. Sales, Ms. Tomin must prove that Mr. Sales owed a duty of care to her, breached that duty by moving her belongings, and that moving the belongings damaged them: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
26. I find that Ms. Tomin has not proven that Mr. Sales negligently obstructed the repairs of CP, causing damage to her property. As I discussed above, Ms. Tomin left her belongings in the structures on CP, knowing they were in disrepair.

27. As I discuss below, I would not award damages even if Ms. Tomin had proven negligence. I find that she has not proven that her belongings were damaged, nor that the damages amount to \$5,000.
28. Ms. Tomin provided some close up photographs of furniture showing some limited damage. However, she did not prove that this damage occurred when the objects were moved, nor did she provide photographs of each item that she says suffered damage.
29. Ms. Tomin also prepared a chart in which she assigned replacement values to items, totalling over \$20,000. I find she did not prove these replacement values through independent evidence such as catalogues, valuations, advertisements or receipts. For example, Ms. Tomin lists a “large vintage map in a wooden frame” at \$450, but did not prove that she had such a vintage map, where she stored it, that it was damaged, or that it was worth \$450.
30. The one exception is Ms. Tomin’s claim for \$2,300 to replace 2 “antique hand carved cabinets”. For the cabinets, Ms. Tomin refers to a live Ebay website link. I am unable to rely on live links as evidence of replacement value. I find this evidence unreliable because the information at the link may have changed: see *Shaikh v. Serene Beauty Salon Limited*, 2021 BCCRT 475 at paragraph 8.
31. I find that Ms. Tomin has not proven damage to any personal belongings amounting to the claimed \$5,000. For these reasons, I dismiss Ms. Tomin’s claims.
32. 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. Ms. Tomin was unsuccessful in this claim, and so I dismiss her claims for CRT fees or dispute-related expenses from this dispute and the strata dispute, where I deferred consideration of her claim to fees and expenses.

ORDER

33. I dismiss Ms. Tomin's claims and this dispute.

Julie K. Gibson, Tribunal Member