Civil Resolution Tribunal

Date Issued: May 20, 2021

File: SC-2020-008388

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lupton v. Levan*, 2021 BCCRT 542

B E T W E E N :

JESSICA LUPTON

APPLICANT

A N D :

MELISA LEVAN

RESPONDENT

A N D :

JESSICA LUPTON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. In June 2020, the applicant (and respondent by counterclaim), Jessica Lupton, moved into the respondent (and applicant by counterclaim) Melisa Levan's house. Ms. Lupton says that Mrs. Levan kept some of her belongings after she moved out, including skis, clothes, a knee brace, kitchen items, footwear, and food. She asks for an order that Mrs. Levan returns these items or pay $2,800 in compensation, which is what she says that these items are worth.

2. After Ms. Lupton started this Civil Resolution Tribunal (CRT) dispute, she picked up some items from Mrs. Levan after Mrs. Levan left them at the curb. Ms. Lupton says that not all of her belongings were there, and that many of her belongings were damaged. Mrs. Levan says that Ms. Lupton has already picked up all her items. She denies responsibility for any damage.

3. Mrs. Levan also says that Ms. Lupton never paid anything towards rent, utilities and storage. In her counterclaim, Mrs. Levan claims $570 for these things. Ms. Lupton denies that the parties agreed that she would pay anything to Mrs. Levan.

4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

6. 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. In some respects, both parties of this dispute call into question the credibility,

or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

9. Mrs. Levan initially provided several pieces of evidence in an unreadable format. I gave her the opportunity to resubmit the evidence, which she did. Because it was unclear whether Ms. Lupton had seen the evidence, I gave her the opportunity to review and comment on that evidence, which she did.

10. I note that the CRT does not have jurisdiction over residential tenancy disputes. The Residential Tenancy Branch (RTB) has exclusive jurisdiction to decide disputes under the *Residential Tenancy Act* (RTA). However, section 4 of the RTA says that it does not apply where a tenant shares a kitchen or bathroom with the house's owner. I find that this exception applies to this dispute, so the RTA does not apply. So, I find that this dispute falls within the CRT's small claims jurisdiction.

ISSUES

11. The parties agree that Ms. Lupton has picked up her printer and it was undamaged, so this item is no longer part of her claim.

12. The remaining issues in this dispute are:

    a. Does Mrs. Levan still have any of Ms. Lupton's property?

    b. Is Mrs. Levan responsible for any damage to Ms. Lupton's property?

    c. Does Mrs. Levan owe Ms. Lupton compensation for lost, damaged or destroyed items?

    d. Does Ms. Lupton owe Mrs. Levan for rent?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Ms. Lupton as the applicant must prove her case on a balance of probabilities. Mrs. Levan must prover her counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

14. Ms. Lupton approached Mrs. Levan on June 20, 2020, asking for a place to stay after upcoming knee surgery. Mrs. Levan agreed. Ms. Lupton's surgery was on June 22, 2020. At that point, the parties were acquaintances. There was no discussion of rent. Mrs. Levan says that she only thought that Ms. Lupton would stay for a week.

15. I note that Ms. Lupton disputes the accuracy and authenticity of some of the text messages in evidence. Most of the text messages in evidence were between the parties and Ms. Lupton did not provide records from her own phone to show that their message history was different than what Mrs. Levan provided. I find that Ms. Lupton has not proven that the text messages were not altered, and I accept them as accurate.

16. On July 30, 2020, Ms. Lupton texted Mrs. Levan to say she was staying with a friend for the weekend. Ms. Lupton did not return after the weekend and did not contact Mrs. Levan to say what her plans were. Ultimately, she did not return to live at Mrs. Levan's house after July 30, 2020. There is no evidence of any communication between the

parties until August 26, 2020. On that day, Mrs. Levan texted Ms. Lupton to ask what to do with Ms. Lupton's belongings.

17. Ms. Lupton did not respond until September 11, 2020, more than 6 weeks after last communicating with Mrs. Levan. She offered to pay Mrs. Levan an unspecified amount of money and asked if she could pick up her belongings. Mrs. Levan asked for $500 for rent, storage and cleaning. Mrs. Levan also asked Ms. Lupton to arrange a time to pick up her things. Ms. Lupton said that she could pay cash but did not say when she could pick up her belongings. It is undisputed that Ms. Lupton did not give Mrs. Levan any cash after this exchange.

18. On September 21, 2020, Ms. Lupton texted Mrs. Levan that she wanted to get her belongings that day. Ms. Lupton then went to Mrs. Levan's house without receiving a response to her text. Mrs. Levan arrived home while Ms. Lupton was still there. Mrs. Levan says that she did not have time to facilitate the exchange at that time, so she asked Ms. Lupton to text her to arrange a mutually convenient time to pick up her belongings. There is no evidence about what Ms. Lupton said to this suggestion, but she did not follow up by text message.

19. Mrs. Levan texted Ms. Lupton on September 23, 2020, that she had left all of Ms. Lupton's belongings outside on the driveway so that Ms. Lupton could pick them up. She said that she had discarded Ms. Lupton's food. She said that she was "not responsible" for Ms. Lupton's belongings.

20. Ms. Lupton did not respond until November 15, 2020, when she said she would come the next day to pick up her things. By that time, her belongings had been outside at the curb for nearly 2 months. Mrs. Levan told Ms. Lupton that she had thrown out her food and some items that were "rotten, moldy, unsanitary". Mrs. Levan says that Ms. Lupton picked up everything that Mrs. Levan had of hers in the days after this exchange. Ms. Lupton says that there are items missing.

Does Mrs. Levan still have any of Ms. Lupton's property?

21. Ms. Lupton provided a list of items she says she either bought or will need to buy to replace items that were either lost, damaged or destroyed. Most of the items are clothing. It is unclear from Ms. Lupton's evidence what items she says Mrs. Levan never returned and which items she says were damaged or destroyed after being left outside. Ms. Lupton provided 3 photos of the items left outside but because there are unopened boxes and storage bins, it is impossible to tell exactly what was there.

22. Ms. Lupton bears the burden of proving that Mrs. Levan still has any of her belongings. I find that she has failed to meet that burden. So, I find that Mrs. Levan left everything of Ms. Lupton's on the curb that she had, and that Ms. Lupton picked it all up. I will turn next to Ms. Lupton's claim that some items were damaged or destroyed.

Does Mrs. Levan owe Ms. Lupton compensation for damaged or destroyed items?

23. As mentioned above, it is undisputed that Ms. Lupton's belongings, other than the printer, were outside at the end of Mrs. Levan's driveway for nearly 2 months. Mrs. Levan lives in BC's interior, so I infer that between late September and mid-November, the items were likely exposed to rain, snow, or both. Mrs. Levan says that she kept sheets and tarps over the items to keep them from being damaged and laundered the clothing once shortly before Ms. Lupton picked everything up. The photos in evidence suggest that some items, like the knee brace and bookshelf, were damaged. Ultimately, I find that I do not need to determine what was damaged because I find that Mrs. Levan is not liable for any damage. My reasons follow.

24. I find that the applicable law is the law of conversion. Conversion is when a person wrongfully handles, disposes of or destroys another person's personal property in a way that is inconsistent with the owner's rights. See *Li v. Li*, 2017 BCSC 1312, at paragraph 213. In essence, Ms. Lupton argues that Mrs. Levan was wrong to put her belongings at the curb without making a specific arrangement about when Ms. Lupton could pick them up.

25. In order for conversion to apply, Mrs. Levan's act must be "wrongful". This means it must be unjust, unfair or harmful. See *Charbonneau v. Mundie's Towing*, 2008 BCPC 239, at paragraph 13. On its face, it would appear that placing someone's belongings at the curb for several weeks is a wrongful act. However, in the context of the parties' relationship, I find that it was not wrongful for Mrs. Levan to put Ms. Lupton's things at the curb. I say this for 2 reasons. First, and most importantly, Mrs. Levan never agreed to store Ms. Lupton's things for any length of time, let alone indefinitely. Ms. Lupton just left her belongings there without asking or saying when she would be back. I find that she owed Ms. Lupton little in this circumstance.

26. Second, I find that Mrs. Levan was justified in refusing to facilitate a pickup when Ms. Lupton showed up unexpectedly. I accept that Mrs. Levan did not want to leave Ms. Lupton alone in her house to gather up her things and that she could not stay at that time. I find that Mrs. Levan's request that Ms. Lupton text her to set up a specific time was reasonable, and when Ms. Lupton did not respond for 2 days, I find that it was reasonable to put her things at the curb because Ms. Lupton had a history of failing to maintain communication. In fact, if Mrs. Levan had waited for Ms. Lupton to get in touch again, she would have had to wait nearly 2 months.

27. I note that Ms. Lupton says that she did not communicate regularly with Mrs. Levan because she had been the victim of identity theft. I find that the parties' text message history does not support this assertion. Ms. Lupton often sent detailed text messages. She provided a letter from her mobile phone provider but it does not say anything about another person being able to send text messages through her account. She also never asked not to communicate via text message.

28. I also considered whether the law of bailment applies. A bailment is a temporary transfer of personal property for safekeeping to another person, known as the "bailee". A bailee may be liable for loss or damage to the property in their safekeeping. However, for bailment to apply, the bailee must voluntarily accept responsibility for the property. See *Litchi v. Landmark Transport Inc. et al*, 2006 BCSC 344. Here, I find that Mrs. Levan did not voluntarily store Ms. Lupton's property. She was forced

to store it because Ms. Lupton left it at her house. Here I rely significantly on the fact that Ms. Lupton told Mrs. Levan that she would only be gone for the weekend on July 30, 2020, but then essentially disappeared for over 6 weeks. So, I find Mrs. Levan was not a bailee of Ms. Lupton's belongings.

29. Ms. Lupton relies to the *Occupiers Liability Act* (OLA). Under the OLA, Mrs. Levan is the "occupier" of her land because she is responsible for it. Section 3 of the OLA says that an occupier must take reasonable care in all the circumstances to make sure that other people's property is reasonably safe on their land. I find that Mrs. Levan is not liable for any damaged property under the OLA for similar reasons as I found she is not liable for conversion. In the circumstances, I find that it was reasonable for Mrs. Levan to put Ms. Lupton's items at the curb for Ms. Lupton to pick up.

30. Ms. Lupton also refers to the RTA but, as discussed above, the RTA does not apply.

31. Finally, Ms. Lupton says that it was an implied term of the parties' contract that she would have reasonable access to Mrs. Levan's house to pick up her things. I reject this argument for 2 reasons. First, in the agreed statement of facts in evidence, Ms. Lupton agreed that the parties did not have a contract. Second, I find that the evidence does not support a finding that Mrs. Levan implicitly agreed to store Ms. Lupton's things until Ms. Lupton could pick them up.

32. For these reasons, I dismiss Ms. Lupton's claims.

Does Ms. Lupton owe Mrs. Levan for rent and storage?

33. As mentioned above, Mrs. Levan claims $570 for rent and storage. Ms. Lupton denies owing any rent. She says that she was Mrs. Levan's guest.

34. While the parties did not agree in advance that Ms. Lupton would pay rent, I find that the parties later agreed that Ms. Lupton would pay $500 in rent. When Mrs. Levan suggested on September 11, 2020, that $500 would be reasonable, Ms. Lupton responded that she could pay cash but not email money transfer. She did not suggest a different amount. I find that this response shows that Ms. Lupton agreed to $500.

35. As for the additional $70, Mrs. Levan says that on July 11, 2020, Ms. Lupton gave her $70 cash towards bills. However, Mrs. Levan says that she ultimately had to spend this $70 to help Ms. Lupton pay her bills. However, even if this is true, there is no mention in Mrs. Levan's September 11, 2020 text message about it. I find that the parties' September 11, 2020 agreement is their entire agreement about rent. I order Ms. Lupton to pay Mrs. Levan $500.

36. The *Court Order Interest Act* (COIA) applies to the CRT. Mrs. Levan is entitled to pre-judgment interest on the rent from September 11, 2020, to the date of this decision. This equals $1.55.

37. 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 find Mrs. Levan is entitled to $75 in CRT fees. She did not claim any dispute-related expenses. As she was unsuccessful, I dismiss Ms. Lupton's claim for CRT fees and dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order Ms. Lupton to pay Mrs. Levan a total of $576.55, broken down as follows:

    a. $500 in rent,

    b. $1.55 in pre-judgment interest under the COIA, and

    c. $75 in CRT fees.

39. Mrs. Levan is entitled to post-judgment interest, as applicable.

40. I dismiss Ms. Lupton's claims.

41. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

42. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member