



# Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2021-000837

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Filsinger v. Popp*, 2021 BCCRT 833

B E T W E E N :

HEATHER FILSINGER

**APPLICANT**

A N D :

TAMI POPP

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute between siblings is about a 6-drawer teak dresser. The applicant, Heather Filsinger, says the respondent Tami Popp, agreed to temporarily store the dresser for her. She says Ms. Popp now refuses to return it. Ms. Filsinger seeks an order for the return of the dresser, which she values at \$1,500.

2. Ms. Popp disagrees. She says Ms. Filsinger gifted the dresser to her in 2015.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Ms. Filsinger's claims.

## **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). 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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether Ms. Filsinger gifted the dresser to Ms. Popp, and if not, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Ms. Filsinger must prove her claims on a balance of probabilities. However, the law of gifts impacts the burden of proof as discussed below. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed facts. Ms. Filsinger and Ms. Popp are siblings. They live at separate addresses in BC. Ms. Filsinger originally inherited the dresser from the parties' grandmother. The parties agree that in October 2015 Ms. Filsinger moved into a new apartment that lacked room for the dresser. Ms. Filsinger transferred the dresser to Ms. Popp. The parties dispute whether Ms. Filsinger gave the dresser as a gift or merely for safekeeping.
12. There is a gap in the evidence as to whether the parties communicated about the dresser over the next few years. Though not in evidence, the parties agree that on March 2, 2020, Ms. Popp texted to Ms. Filsinger that she was "welcome to pick [the dresser] up whenever you like". Ms. Popp says she believed she owned the dresser, but sent the text to be supportive at the time.
13. Text messages in evidence show that on April 8, 2020, Ms. Filsinger told Ms. Popp that she wanted the dresser back. In August 2020 Ms. Filsinger emailed Ms. Popp several times to arrange pickup of the dresser. Ms. Popp stopped responding to these emails. She explains this was because Ms. Filsinger was becoming increasingly aggressive and abusive in her emails, texts and phone calls at the time.

***Did Ms. Filsinger gift the dresser to Ms. Popp?***

14. Although Ms. Filsinger did not use the term, I find her claim is essentially based in the tort of detinue. This means the continuous wrongful detention of personal property. To show a claim in detinue, Ms. Filsinger must show Ms. Popp failed or refused, upon proper demand, to deliver the dresser without lawful excuse: *Schaffner v. Insurance Corporation of British Columbia*, 2016 BCSC 1186 at paragraph 11.
15. A detinue does not occur until the applicant has demanded the return of the goods and the demand has been refused: *Schaffner* at paragraph 10. I find that Ms. Popp failed or refused when she did not respond to the August 2020 emails to arrange for dresser pickup.
16. I note that the *Limitation Act* applies to disputes before the CRT. It establishes a basic limitation period of 2 years. As I find the alleged tort occurred in August 2020, and as the parties did not argue Ms. Filsinger's claims were out of time, I find there is no limitation period issue in this dispute.
17. In substance Ms. Popp says that her lawful excuse for refusing to return the dresser was that it was a gift. Under the law of gifts, once the applicant has proven the transfer of the goods, as Ms. Filsinger has done here, the burden of proof shifts to the person alleging the item was a gift. This means Ms. Popp bears the burden to prove the dresser was a gift. See *Pecore v. Pecore*, 2017 SCC 17.
18. To be legally binding a gift requires an intention to donate. The donor's intention at the time of the transfer is the primary consideration. See *McKendry v. McKendry*, 2017 BCCA 48 at paragraph 31.
19. I find the best evidence of Ms. Filsinger's intention at the time of the dresser's transfer is the parties' October 2015 text messages. After delivering the dresser, Ms. Filsinger asked on October 24, 2015 if Ms. Popp's family member, S, liked the dresser. Ms. Popp texted back that S liked the dresser but did not like "all of my stipulations and rules surrounding the dresser". Ms. Popp wrote that she had moved the dresser into

the guest bedroom. She added, “If you decide that you want it back you are welcome to it” otherwise she was “happy to have it”.

20. I conclude from these messages that Ms. Filsinger had an intention to donate the dresser at the time she transferred it to Ms. Popp. The text messages show Ms. Filsinger transferred the dresser so that S could use it. I find this shows she did not merely transfer it for storage or safekeeping. When Ms. Popp advised that S did not want to use it, Ms. Filsinger did not return to pick it up, even though she was invited to do so. Ms. Popp added she was otherwise “happy to have it”. Filsinger did not disagree or comment on this statement. I find her silence was consistent with an intention to donate the dresser.
21. Given the above, I find Ms. Popp has proven Ms. Filsinger gifted the dresser to her. As the dresser is Ms. Popp’s property, I dismiss Ms. Filsinger’s claims about it.
22. 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. Ms. Popp paid no CRT fees and claimed no dispute-related expenses. So, I order none.

## **ORDER**

23. I dismiss Ms. Filsinger’s claims and this dispute.

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David Jiang, Tribunal Member