



Civil Resolution Tribunal

Date Issued: October 28, 2021

File: SC-2021-000793

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Travers v. Wong*, 2021 BCCRT 1145

B E T W E E N :

FENTON TRAVERS

APPLICANT

A N D :

JENNIFER WONG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about division of personal property and return of a damage deposit after a relationship breakdown.
2. The applicant, Fenton Travers, and the respondent, Jennifer Wong, lived together for a short time in 2019. Mr. Travers moved out of the parties' apartment and says that

Ms. Wong failed to return all his belongings. He seeks \$2,500 for the value of the belongings Ms. Wong kept. Mr. Travers also says he paid the full \$750 damage deposit for the apartment, so he seeks return of the \$750.

3. Ms. Wong says Mr. Travers retrieved all his belongings from their apartment after he left and anything remaining was left on purpose and was intended as a gift for her and their son. Ms. Wong denies that Mr. Travers paid the \$750 deposit and says she owes him nothing.
4. The parties are each self-represented.

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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. I note the decision in *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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. The uncontested evidence is that the parties did not live together for at least 2 years, and so they do not meet the definition of spouses under the *Family Law Act* (FLA). I find that the FLA does not apply to this dispute. I am satisfied that this dispute falls within the CRT's small claims jurisdiction for debt, damages, and recovery of personal property as set out in section 118 of the CRTA.

ISSUES

10. The issues in this dispute are:
 - a. Did Mr. Travers gift any of his belongings to Ms. Wong and their son, and if not, to what extent does Ms. Wong owe Mr. Travers for retained items?
 - b. Does Ms. Wong owe Mr. Travers \$750 for a damage deposit?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Travers must prove his claims on a balance of probabilities. This burden of proof is subject to the law of gifts, which I discuss below. I have read all the parties' evidence and submissions, but I refer only to what I find relevant and necessary to provide context for my decision.
12. Mr. Travers and Ms. Wong were in a romantic relationship that started in approximately May 2018. The evidence shows that the parties signed a tenancy agreement as co-tenants on November 29, 2018. The majority of the apartment's

furnishings came from Mr. Travers, as Ms. Wong rented out her existing apartment fully furnished. The parties had a son born in March 2019. On April 4, 2019, the parties' relationship ended, and Mr. Travers moved out of the apartment. None of this is disputed.

13. While the parties each made extensive submissions about the circumstances of their relationship breakup, I find the reasons for the breakup are irrelevant to this dispute. The parties agree that Mr. Travers left most of his personal belongings behind when he moved out. The evidence shows that Ms. Wong returned some of his things at his request, and he was able to retrieve other small items during visits with his son. However, Mr. Travers says that Ms. Wong has still refused to return some of his belongings, which he values at \$2,500.
14. Ms. Wong argues that anything Mr. Travers left behind after about July 30, 2019, was a gift for her and their son. She says during a conversation on that date, Mr. Travers specifically told her that she could keep all items remaining in the apartment, including furniture and a television, "for good". She says it was only later, when they were no longer getting along, that he started asking for some of the items back.
15. Mr. Travers denies that he gifted Ms. Wong anything of his that remained in the apartment.
16. Under the law of gifts, the person who received the alleged gift bears the burden of establishing it was a gift (see *Pecore v. Pecore*, 2007 SCC 17). Ms. Wong must prove that Mr. Travers intended to donate his personal belongings to her, she accepted them, and there was a sufficient act of delivery (see *Pecore*, and *Lundy v. Lundy*, 2010 BCSC 1004). The evidence should also show that the intention of a gift is inconsistent with any other intention or purpose (*Lundy* at paragraph 20).
17. On the evidence before me, I find there are some items of furniture that Mr. Travers was content not to retrieve from the apartment. Mr. Travers refers to having purchased plants, a rug, coffee tables, side tables, dressers, lights, and sofas. There is no evidence before me that Mr. Travers requested these items be returned to him

at any point after the parties' breakup, and he has not specifically requested compensation for them in this dispute. On balance, I find it is likely that Mr. Travers intended to donate those specific items of furniture to Ms. Wong, for her and their son's use, which she accepted.

18. However, I find Ms. Wong has not proven Mr. Travers gifted her other certain personal belongings. In the parties' text messages in evidence, Mr. Travers repeatedly asked Ms. Wong to return specific belongings, and in none of Ms. Wong's responses did she mention that he had given any of the requested items to her as a gift. Further, the parties' texts show that when Mr. Travers first learned Ms. Wong had alleged he gifted her his television, he immediately refuted that it was a gift. Finally, I note that in an April 24, 2020 text message, Mr. Travers stated that Ms. Wong had borrowed his television for a year now, and he would like it back.
19. Given that Ms. Wong came into possession of all Mr. Travers' belongings when he unexpectedly vacated their apartment, I find it is likely that he intended to retrieve his belongings, other than the gifted furniture items, as the parties navigated their breakup. While gifting all his personal belongings to Ms. Wong is plausible, I find it is equally possible that he permitted her to borrow some items or expected her to keep them until he was able to retrieve them. So, on balance, I find Ms. Wong has failed to establish that Mr. Travers gifted her all his belongings that remained in the apartment.
20. The difficulty is that Mr. Travers has not provided any itemized list of the belongings he claims Ms. Wong has improperly retained. The text message evidence shows that, at various times, Mr. Travers asked Ms. Wong to return a blender, coffee machine, and television. I accept that those 3 items were not gifted to Ms. Wong, and that she has improperly kept them. However, it is unclear whether Mr. Travers is claiming compensation for more than just those 3 items.
21. In any event, Mr. Travers did not provide any description of the blender, coffee machine, television, or any other claimed items, their age, condition, or cost, for me to determine their present value. He also provided no receipts or quotes for their replacement. In the absence of evidence, on a judgment basis I award the nominal

sum of \$150 for all Mr. Travers' belongings that were not gifted, and that Ms. Wong improperly retained.

22. I turn to the damage deposit.
23. Mr. Travers says that he paid a \$750 damage deposit when he moved into the apartment. For reasons that are unnecessary to detail here, as noted, Mr. Travers moved out and Ms. Wong remained in the apartment with their son.
24. Ms. Wong agrees that Mr. Travers delivered the damage deposit to their landlord. However, she says that there is "little to no proof" that Mr. Travers paid the damage deposit out of his own personal funds. She does not say who else may have paid it. I find that whether Mr. Travers used his own money or borrowed it from someone else is irrelevant. Mr. Travers provided a copy of a receipt he received from the landlord, showing he paid the \$750 damage deposit.
25. There is no evidence before me to suggest there was any damage to the apartment at the time Mr. Travers moved out. Given that Ms. Wong remains in the apartment, I find the apartment's condition when she moves out is now within her full control. As noted, the parties both signed the tenancy agreement as co-tenants, so I find the landlord will likely remit the damage deposit to Ms. Wong as the remaining tenant, when she moves out. Ms. Wong does not suggest otherwise. Therefore, I order Ms. Wong to reimburse Mr. Travers for the \$750 damage deposit he paid.
26. The *Court Order Interest Act* applies to the CRT. Mr. Travers is entitled to pre-judgment interest on the \$900 from May 4, 2019, which is one month after he moved out, to the date of this decision. This equals \$25.75.
27. 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 Mr. Travers was partially successful, so he is entitled to reimbursement of half his CRT fees, which equals \$62.50. Neither party claimed any dispute-related expenses.

ORDERS

28. Within 30 days of the date of this decision, I order Ms. Wong to pay Mr. Travers a total of \$988.25, broken down as follows:
- a. \$150 in damages for unreturned personal belongings,
 - b. \$750 for reimbursement of the damage deposit,
 - c. \$25.75 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$62.50 in CRT fees.
29. Mr. Travers is entitled to post-judgment interest, as applicable.
30. 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.
31. 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.

Kristin Gardner, Tribunal Member