



Civil Resolution Tribunal

Date Issued: February 15, 2022

File: SC-2021-005466

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *King v. Bjerregaard*, 2022 BCCRT 172

BETWEEN:

TODD KING

APPLICANT

AND:

BOB BJERREGAARD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The parties are next-door neighbours, and this dispute is over an allegedly stolen denture.
2. The applicant, Todd King, says the respondent, Bob Bjerregaard, took his denture when it fell out of his mouth and onto Mr. Bjerregaard's side of their shared fence line

during a heated argument between the parties. Mr. King says Mr. Bjerregaard refused to return the denture. Mr. King claims \$3,480 for the cost of the replacement denture, and \$1,520 in damages for pain and suffering.

3. Mr. Bjerregaard denies taking Mr. King's denture. He says Mr. King's allegation that he took the denture is fabricated and he is not responsible for any of Mr. King's claimed remedies.
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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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 Mr. Bjerregaard took Mr. King's denture and if so, what are the appropriate remedies, if any?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. King must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

Did Mr. Bjerregaard take Mr. King's denture?

11. Although he does not use these words, I find Mr. King's claim against Mr. Bjerregaard is based on the tort of conversion. The tort of conversion involves wrongfully holding on to another person's property. As noted, Mr. King alleges that Mr. Bjerregaard took Mr. King's denture when it fell out of Mr. King's mouth onto Mr. Bjerregaard's side of the fence and refused to return the denture to Mr. King.
12. The tort of conversion is proved when someone purposely does something to deal with goods in a wrongful way that is inconsistent with the owner's rights (see: *Li v. Li*, 2017 BCSC 1312, citing *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 (CanLII) at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 (CanLII) at para. 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 (CanLII) at para. 58; *Dhothar v. Atwal*, 2009 BCSC 1203 (CanLII) at para. 15).

13. The law is clear that Mr. King must prove a wrongful act by Mr. Bjerregaard involving Mr. King's personal property, the act must involve handling, disposing, or destroying the goods, and Mr. Bjerregaard's actions must have either the effect or intention of interfering with (or denying) Mr. King's right or title to the goods.
14. It is undisputed that the parties engaged in a heated argument on May 27, 2021 over the parties' shared fence. Videos in evidence confirm this.
15. In his Dispute Response, Mr. Bjerregaard says the argument with Mr. King started after he broke up a fight between Mr. King and another neighbour, TF. I accept this, as Mr. King also says he had an argument with TF before his disagreement with Mr. Bjerregaard.
16. Mr. King submitted his own November 5, 2021 affidavit in evidence. In his affidavit, he says that he was in a disagreement with TF on TF's property, and then went home. Mr. King says that at some point he began to have a disagreement with Mr. Bjerregaard over the fence that separated their properties and TF came over to "see what was going on". Mr. King says that at some point during the disagreement his upper denture came out of his mouth and fell on Mr. Bjerregaard's side of the fence. He says TF went to pick it up, but Mr. Bjerregaard stopped him. Mr. King says Mr. Bjerregaard picked up his denture and refused to return it. He says he called the police to retrieve the denture from Mr. Bjerregaard who denied having it. Neither party submitted any evidence from the police.
17. Mr. King says he sent Mr. Bjerregaard a June 10, 2021 letter requesting the denture's return. The June 10, 2021 letter is in evidence. Mr. Bjerregaard does not dispute receiving the letter and I find he received it. However, nothing turns on this. Mr. King says he had no choice but to go get a new upper denture when his was not returned to him.
18. Mr. King also submitted an October 2, 2021 affidavit from TF in evidence. The evidence in TF's affidavit largely confirms Mr. King's version of events described above. TF also says Mr. King kept asking for his denture but Mr. Bjerregaard ignored

him. TF says they tried to convince Mr. Bjerregaard to return the denture several times, but he refused. TF says they sent their wife to ask Mr. Bjerregaard for the denture but he refused to return it. He says the denture has never been returned. There is no statement in evidence from TF's wife.

19. Mr. Bjerregaard disputes Mr. King and TF's version of events. He says Mr. King was intoxicated and he should not be responsible for Mr. King losing his denture. Mr. Bjerregaard submitted videos in evidence he says he took during the disagreement. I find the videos show Mr. King is visible in his yard, and a person I infer is TF is visible in Mr. Bjerregaard's yard. Mr. Bjerregaard and Mr. King are yelling and swearing at each other. There is another voice in the video, which I infer is another person on Mr. Bjerregaard's property during the disagreement. It is not possible to tell whether anyone is intoxicated in the videos. Beyond identifying the people present during the disagreement, I find that the videos are not helpful in establishing whether or not Mr. Bjerregaard took Mr. King's denture because the videos do not show the denture falling out, or whether or not the denture was kept by Mr. Bjerregaard or returned to Mr. King. I also find that nothing turns on whether Mr. King was intoxicated. Neither party submit a witness statement from the fourth person present during the disagreement.
20. Mr. Bjerregaard also says Mr. King's three descriptions of how he lost his denture are inconsistent. In his Dispute Notice Mr. King said his denture fell out when Mr. Bjerregaard "swung to hit him". In his June 10, 2021 letter to Mr. Bjerregaard he says his denture fell out when he said something to Mr. Bjerregaard right after Mr. Bjerregaard "tried to swing at me over the fence", and in his affidavit he says it "accidentally came out". I do not agree with Mr. Bjerregaard that these descriptions are inconsistent.
21. Mr. Bjerregaard says he did not witness Mr. King's denture coming out and has never had Mr. King's denture. He says Mr. King called the police. He says he allowed the police to look in his backyard for the denture but the police found nothing. He also

says that the police took Mr. King to “the cells tonight”. Mr. King does not dispute that he was taken to jail. As noted, neither party submitted evidence from the police.

22. Finally, Mr. Bjerregaard says TF’s affidavit is not true, and says that if it was, the police would have arrested Mr. Bjerregaard that day. Mr. Bjerregaard did not specifically address the details in TF’s affidavit. I find that TF was, at the very least, a neutral witness. There is no evidence that TF and Mr. Bjerregaard had any sort of disagreement. If anything, TF was aligned against Mr. King given they were the ones who were initially fighting. TF was also undisputedly in Mr. Bjerregaard’s backyard during the disagreement. Given this, I find it unlikely that TF would be dishonest in their evidence to favour Mr. King and see no other reason to doubt the credibility or reliability of their evidence. Therefore, I accept that Mr. Bjerregaard refused to return Mr. King’s denture when asked, as described by Mr. King and confirmed by TF.
23. As noted, Mr. King bears the burden of proving his claims on a balance of probabilities. Here, based on all the available evidence, I find that Mr. King has proved on balance that Mr. Bjerregaard retained his denture and refused to return it. In making this decision, I place significant weight on TF’s affidavit, because as noted, I find TF is a neutral witness in this dispute. I find TF’s affidavit is persuasive evidence that Mr. Bjerregaard refused to return Mr. King’s denture to Mr. King or anyone else. Given this, I also find Mr. Bjerregaard interfered with Mr. King’s right to his denture and therefore committed the tort of conversion. I find he is responsible to pay damages on that basis. I will address the appropriate measure of damages below.

What are the appropriate remedies?

24. As noted, Mr. King claims \$3,480 for the cost of his replacement denture. In support of this claim, he submitted an August 11, 2021 statement of account from Guildford Denture Clinic Inc.. The statement of account includes charges that pre-date the May 27, 2021 incident with Mr. Bjerregaard, which I find Mr. King is not entitled to. However, it also includes a \$1,500 charge for a denture (after a \$500 voluntary discount) on July 14, 2021. I find this charge is consistent with a November 1, 2021 Guildford Denture Clinic statement that confirms Mr. King was fitted for a denture on

July 14, 2021. I find the evidence shows that the replacement denture after the May 27, 2021 incident only cost \$1,500. So, I find Mr. King is entitled to reimbursement of this amount.

25. Mr. King also claims \$1,520 for pain and suffering. Mr. King says he could not eat properly and developed sores in his mouth that were uncomfortable and very painful at times. He also says he had to take medication for the pain but did not submit evidence of any medication. Mr. King also relies on the Guildford Denture Clinic statement discussed above. The statement says, in part, that as a result of Mr. King not wearing his denture for a period of time, his gums were irritated and red from chewing without a denture. I note that the Guildford Denture Clinic statement Mr. King relies on is unsigned. Contrary to the CRT rules for expert evidence, I do not know who observed Mr. King's gums or provided the opinion evidence that his gums were irritated and red from chewing without a denture. While I accept the statement confirms that Mr. King replaced his denture on July 14, 2021, I place no weight on it as expert evidence that Mr. King suffered any physical damage without the use of his denture. Despite this, I accept Mr. King's own evidence that he suffered some damage to his gums from not having his denture between May 27, 2021 and July 14, 2021. On a judgment basis, I award Mr. King \$200 in damages for pain and suffering. Together with \$1,500 for the replacement denture, I award Mr. King a total of \$1,700.

Interest and Fees

26. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. King is entitled to pre-judgment interest on the \$1,500 denture replacement award from July 14, 2021, the date he received the replacement denture, which I find is reasonable in the circumstances, to the date of this decision. This equals \$4.00. The COIA does not apply to damages for pain and suffering.

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 see no reason in this case not to follow that general rule.

I find Mr. King is entitled to reimbursement of \$175 in CRT fees. Mr. King did not claim any dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Mr. Bjerregaard to pay Mr. King a total of \$1,829.00, broken down as follows:
 - a. \$1,700 in damages for the replacement denture and pain and suffering,
 - b. \$4.00 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
29. Mr. King 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.

Leah Volkers, Tribunal Member