



# Civil Resolution Tribunal

Date Issued: February 28, 2022

File: SC-2021-004606

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cassidy v. Bastien*, 2022 BCCRT 212

BETWEEN:

PIPPA CASSIDY

**APPLICANT**

AND:

CAM BASTIEN (Doing Business As CAROUSEL CLEANERS)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about damaged drapes. The applicant, Pippa Cassidy, says the respondent, Cam Bastien (doing business as Carousel Cleaners), damaged her drapes while dry cleaning them. She claims \$1,700 as compensation.

2. Mr. Bastien disagrees. He says the drapes became damaged because they had exceeded their product lifespan. He says his staff dry cleaned the drapes in a reasonable manner. He also says his employees previously warned Mrs. Cassidy that drapes could be damaged by dry cleaning and she accepted that risk.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss Mrs. Cassidy'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 Mr. Bastien is liable for damaging the drapes, and if so, what remedy is appropriate.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mrs. Cassidy must prove her claims on a balance of probabilities. This means more likely than not. 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. The facts are largely undisputed. On April 20, 2021 Mrs. Cassidy left her unlined linen drapes with Mr. Bastien for dry cleaning. It is undisputed that the drapes were 15 years old. Neither party raised the issue of their age until after they were damaged.
12. The parties' contract was largely undocumented. Mr. Bastien gave her a claim check receipt. It had no contractual terms or disclaimers. Mr. Bastien says his staff warned Mrs. Cassidy that the drapes could be damaged by cleaning, and she accepted that risk. However, the only warning in evidence is a January 28, 2021 email about a separate dry-cleaning order. I find it did not apply to the April 2021 order. Mrs. Cassidy's undisputed submission is that the email was about a separate set of drapes. There is no indication find Mr. Bastien and his staff warned her about the specific drapes in this dispute. I do not find the January 2021 email's wording was general enough to apply to all drapes, or that Mrs. Cassidy should have reasonably known it applied. However, as explained below ultimately nothing turns on this.
13. On April 28, 2021, Mr. Bastien's employee emailed Mrs. Cassidy. The employee said that the drapes had sustained "damage that is not repairable" from dry cleaning and she would waive all cleaning charges. Pictures of the drapes show substantial tearing and deterioration of the fabric. Mr. Bastien does not deny that his cleaning process led to the depicted damage. An April 27, 2021 receipt shows the drapes also

damaged Mr. Bastien's dry cleaning machine. However, Mr. Bastien makes no counterclaim in this dispute, so I make no findings about his machine's damage.

### ***The Law of Bailment***

14. A bailment is a temporary transfer of property, where the personal property of one person, a "bailor", is handed over to another person, a "bailee". A bailment situation may arise where, as is the case here, the bailor temporarily provides goods to the bailee to carry out work. The goods are then returned once the work is completed. As expressly noted in *Davis v. Henry Birk & Sons Ltd.*, 1982 CanLII 490 (BCCA) at paragraph 3, the law of bailment applies to a wide range of commercial activities, including dry cleaning. A bailment can exist independently of a contract, but I find in this dispute that both a bailment and contractual relationship existed between the parties.
15. In *Blais v. Brown*, 1992 CanLII 2717 (NBQB), the plaintiff sued for the value of a dress damaged by a drycleaner. At paragraph 8, the court noted that the bailee for reward, or drycleaner, bears the burden of proof to show that it took reasonable care of the dress and was not negligent. The CRT reached the same conclusion about the burden of proof in a dispute about a damaged suit left at a cleaner. See *Cattoni v. 1048443 B.C. Ltd.*, 2018 BCCRT 170. Although these decisions are not binding, I find they accurately set out the applicable law. I find Mr. Bastien has the burden to show he took reasonable care and was not negligent.
16. Mr. Bastien submitted written comments from an insurance adjuster. The adjuster said the drapes were not cleaned negligently and became damaged because of age and pre-existing sun damage. The adjuster said that drapes have a maximum life expectancy of 4 to 5 years. This figure comes from page 23 of a copy of the Fair Claims Guide (Guide). As noted in its introduction, the Guide is used to provide a formula for settlement of damage claims for textile products. Mr. Bastien also provided an October 1, 2021 letter from CW, a representative for a manufacturer of cleaning agents. CW wrote that Mr. Bastien used its cleaning agents in a safe and effective manner.

17. I find this situation bears some resemblance to the one described in *Cattoni*. In that dispute, the applicant claimed compensation for a damaged suit that was 24 years old. This was 14 years past the manufacturer's recommended replacement date. The CRT found that dry cleaning the suit did not cause the delamination, which was already occurring due to age. The CRT dismissed the applicant's claim.
18. Although *Cattoni* is not binding, I find similar reasoning applies in this dispute. I find the best evidence of the drapes' durability is the Guide. It suggests the drapes are approximately a decade beyond their replacement date. Mrs. Cassidy did not provide any evidence to rebut this. I find that because of their age, they would have been unable to withstand ordinary dry cleaning. As such, I am not persuaded that Mr. Bastien caused any damage to the drapes through negligence or a failure to exercise reasonable care. I dismiss Mrs. Cassidy's claims.
19. 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 dismiss Mrs. Cassidy's claims for reimbursement. The parties made no claims for any specific dispute-related expenses, so I order none.

## **ORDER**

20. I dismiss Mrs. Cassidy's claims and this dispute.

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David Jiang, Tribunal Member