



Civil Resolution Tribunal

Date Issued: June 17, 2022

File: SC-2021-009011

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stonehouse v. Tindle*, 2022 BCCRT 709

B E T W E E N :

JAYLEEN STONEHOUSE

APPLICANT

A N D :

BOB TINDLE (Doing Business As RIVER CITY MOVES)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Jayleen Stonehouse, hired the respondent, Bob Tindle (Doing Business As River City Moves), to move her belongings twice within British Columbia.

The moves were about 5 months apart and Ms. Stonehouse had possession of her belongings in between.

2. Ms. Stonehouse says she discovered after the second move that Mr. Tindle lost 2 of her moving bins. She claims \$1,000 to replace the items she says were in the bins, including a Vitamix blender and all the lids for her pots and pans.
3. Mr. Tindle says it is more likely that something happened to the bins while they were in Ms. Stonehouse's care in between moves.
4. Each party is 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. 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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt 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.

ISSUE

9. The issue in this dispute is whether Mr. Tindle lost Ms. Stonehouse's 2 bins, and if so, to what extent must he pay the claimed damages.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Stonehouse must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Tindle chose not to submit any evidence.
11. The parties' agreement was verbal but neither party gave evidence about its terms. Ms. Stonehouse paid Mr. Tindle \$1,575 in June 2021, for the first move and the same amount in November 2021 for the second move. The first move was from Ms. Stonehouse's former home to a marina and resort (the resort) where Ms. Stonehouse lived for 4 months from June through October.
12. The second move, on November 3, 2021, was from the resort to Ms. Stonehouse's new home. Ms. Stonehouse says she had 64 bins, but only realized 2 bins were missing when unpacking the bins at her new home in November 2021. I accept that Ms. Stonehouse had 64 bins to start and 62 bins at the end, in part because Ms. Stonehouse provided an invoice for rental of 60 bins which noted she already had 4.

Mr. Tindle acknowledges he never counted the bins, and he does not particularly dispute that 2 bins were lost.

13. Ms. Stonehouse argues that Mr. Tindle should have counted the bins before and after each move, but she provided no evidence that the standard of care of a reasonably competent mover includes counting the number of bins or boxes. So, I find nothing turns on Mr. Tindle's failure to count the bins.
14. The key question is whether the bins were lost when they were under Mr. Tindle's care and control, or Ms. Stonehouse's.
15. Ms. Stonehouse agrees that the trucks were completely emptied of bins during both moves. She says the only explanation is that the bins were stolen out of the back of the truck during loading for the first move. It is undisputed that Mr. Tindle provided a 2-person crew and that each time they loaded the elevator during the 4-hour move, the truck was left open and unattended. Ms. Stonehouse says the area is a "relatively high crime area".
16. In contrast, Mr. Tindle says the bins more likely disappeared in the 4 months between the first and second move. It is undisputed that Ms. Stonehouse instructed Mr. Tindle's crew deliver her belongings to 3 locations. One or two sofas went to an offsite storage location. The belongings Ms. Stonehouse needed for 4 months were delivered to the resort unit where she was staying (upper unit). Everything else went into an empty resort unit below the upper unit (storage unit). Ms. Tindle does not specify whether all of the bins went into the storage unit, but I infer at least most of them did.
17. Ms. Stonehouse says the bins in the storage unit were placed in the middle and surrounded by furniture, making it virtually impossible to reach the bins. She says only her and the resort's front desk manager, CI, had keys to the storage unit. This is confirmed by CI's witness statement, and I accept it.
18. Ms. Stonehouse admits that 2 others had access to the storage unit – her friend RB, and RB's son, TB, who is coincidentally employed by Mr. Tindle. Ms. Stonehouse

says she allowed RB and TB to store some belongings in the storage unit, and loaned them the key for that purpose. She says they had no reason or ability to remove anything from the storage unit. Neither RB nor TB provided a statement.

19. For his part, Mr. Tindle says during the second move he observed that bins had been moved around. In particular, he says there were bins at the off-site storage that he did not move there. Ms. Stonehouse did not dispute this, so I accept it.
20. Weighing the evidence, I find the 2 alternatives offered by the parties equally likely. Given the undisputed evidence that others had keys and access to the storage unit, I find the storage room could have been left briefly unattended at some point over the 4 months between moves. It is also possible that the 2 missing bins were moved to the off-site storage and then lost or stolen. I do not mean to suggest that Ms. Stonehouse is being untruthful. Rather, I simply find she has not met her burden of proving on a balance of probabilities that the 2 bins went missing from the moving truck or while otherwise in Mr. Tindle's possession and control. With that, I dismiss Ms. Stonehouse's claim.
21. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Mr. Tindle was successful but did not pay CRT fees or claim expenses. I dismiss Ms. Stonehouse's claim for reimbursement of CRT fees.

ORDER

22. I dismiss Ms. Stonehouse's claims and this dispute.

Micah Carmody, Tribunal Member