



Civil Resolution Tribunal

Date Issued: February 17, 2023

File: SC-2022-002694

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ottosen v. City of Victoria*, 2023 BCCRT 149

B E T W E E N :

NIKI OTTOSEN

APPLICANT

A N D :

CITY OF VICTORIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicant, Niki Ottosen, says that bylaw officers employed by the respondent, City of Victoria (City), wrongly confiscated numerous items she collected as donations to assist unhoused individuals. Mrs. Ottosen says that the City failed to return all of the confiscated items in the same condition as when they were taken, and that some

items were not returned at all. Mrs. Ottosen claims \$500 for the estimated value of the items the City allegedly failed to return.

2. The City denies Mrs. Ottosen's claims. It says that its bylaw officers were authorized to impound the donated items under the City's bylaws. It also says that Mrs. Ottosen has not established the City ever possessed the items she alleges went missing. In any event, the City says that Mrs. Ottosen has no standing to bring this dispute because it says she did not own the donated items and she was not present when the bylaw officers confiscated them.
3. Mrs. Ottosen is self-represented. The City is represented by a lawyer, Jeffrey Locke.
4. For the reasons that follow, I find Mrs. Ottosen does not have standing to bring this dispute, and I dismiss her 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.
9. The City objected to Mrs. Ottosen's final reply submissions on the basis that they included new evidence and new or expanded arguments for her claims that she should have included in her original submissions. The new evidence consists of a reproduced witness statement from MM, who was present during the items' confiscation. Mrs. Ottosen submits the original statement is signed, but she was unable to upload the signed copy as evidence because the CRT's deadline to provide evidence had passed. The City says the late evidence and arguments should not be considered, as it has not had the opportunity to respond.
10. Considering the CRT's mandate, which includes flexibility, I find it is appropriate to allow Mrs. Ottosen's reply submissions, including the late evidence, which I find responds directly to the City's evidence and submissions. However, I decided it was unnecessary to provide the City with a further opportunity to respond to the late evidence and new arguments, given my conclusions below and dismissal of Mrs. Ottosen's dispute.

ISSUES

11. The issues in this dispute are:
 - a. Does Mrs. Ottosen have standing to bring this dispute?
 - b. If so, to what extent, if any, does the City owe Mrs. Ottosen \$500 for the alleged missing items?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mrs. Ottosen must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. I begin by setting out some of the undisputed background facts.
14. Mrs. Ottosen is a community advocate for unhoused individuals. On September 25, 2021, she received a phone call from MM, her friend and fellow advocate, seeking donations for the purpose of establishing a “respite tent” for unhoused individuals in a City-owned public park. Mrs. Ottosen went to her mother’s residence that evening to collect numerous items her mother wanted to donate for the respite tent, such as cots, blankets, sleeping bags, food, and medical supplies. Mrs. Ottosen then took those donated items to the park and delivered them to MM.
15. MM erected 2 tents on the sports field in the park, and placed the donated items inside the tents, with the intention of distributing the items the following day. MM’s statement reproduced in Mrs. Ottosen’s submissions said that MM stayed with the tents and the donated items overnight.
16. In the late morning on September 26, 2021, City bylaw officers arrived in the park and issued MM a bylaw violation ticket on the basis that tents are not permitted on sports fields in City parks. The bylaw officers also impounded the tents and their contents. On October 21, 2021, bylaw officers returned the impounded items to MM at her residence. Mrs. Ottosen was not present when the donated items were impounded or when they were delivered back to MM.
17. Mrs. Ottosen says that she went to MM’s residence and was “stunned” when she saw what the bylaw officers had returned because she could immediately tell many items were missing. She says all the items had been new and in original packaging when donated, but everything was unpackaged and thrown loosely into garbage bags when

returned to MM. Mrs. Ottosen provided an itemized list of what she says the bylaw officers failed to return, which together she claims had an approximate \$500 value.

Does Mrs. Ottosen have standing to bring this dispute?

18. Generally, “standing” in a legal dispute such as this one, means an applicant’s legal right to bring a claim against the named respondent.
19. Mrs. Ottosen bases her claims against the City in negligence and the tort of conversion. Negligence is about failing to take reasonable care in the circumstances, and requires an applicant to show the respondent owed them a duty of care. Conversion occurs when someone wrongfully handles, disposes of, or destroys another person’s personal property.
20. I find that for Mrs. Ottosen to be successful in either negligence or conversion, she must establish that she had a property interest in the donated items that allegedly went missing while in the City’s possession. In other words, I find that only if Mrs. Ottosen owned or had some beneficial interest in the items, would the City owe her a duty to take reasonable care of the items or be responsible for improperly handling or disposing of them. As the items were undisputedly going to be given to unhoused individuals at no cost, I find Mrs. Ottosen had no beneficial interest in them, and so I focus my analysis on the items’ ownership.
21. On Mrs. Ottosen’s own evidence, she obtained the donated items from her mother, who presumably purchased them. So, I find it was Mrs. Ottosen’s mother who initially owned the items. I find that just because Mrs. Ottosen took the items into her possession for the purpose of delivering them to MM, does not mean the items’ ownership transferred to Mrs. Ottosen. Rather, I find that Mrs. Ottosen’s mother donated the items to MM’s respite tent, and once Mrs. Ottosen delivered the items to MM, the items’ ownership transferred to MM.
22. While Mrs. Ottosen says that she intended to assist MM with distributing the items on September 26, 2021, I find the items never belonged to Mrs. Ottosen. For that reason, I find Mrs. Ottosen does not have standing to bring a claim against the City in

negligence or conversion about the alleged missing items, and I dismiss this dispute on that basis.

23. Even if I had found Mrs. Ottosen had standing to bring this dispute, I also find she has failed to prove her damages. Mrs. Ottosen provided no information about the specific brand, model, or cost of each missing item, nor any receipts for their purchase or evidence of their individual replacement cost. Notably, there is no statement from Mrs. Ottosen's mother about the list of missing items, how she acquired the items, or their cost. So, even if Mrs. Ottosen had established the City was negligent or liable for conversion, I find her damages are unproven.

CRT fees and dispute-related expenses

24. 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. Mrs. Ottosen was unsuccessful, and so I dismiss her claim for CRT fees and expenses. As the City was successful, I find it is entitled to reimbursement of \$25 for its paid CRT fees.
25. The City also claims \$5,000 for "a portion" of its legal fees. Under the CRT's rules, legal fees are generally not recoverable in CRT disputes except in extraordinary circumstances. When determining whether such extraordinary circumstances exist in a particular dispute, CRT rule 9.5(4) says a tribunal member may consider the complexity of the dispute, the legal representative's degree of involvement, whether a party's conduct has caused unnecessary delay or expense, and any other factors it considers appropriate.
26. The City submits that this dispute was extraordinary because it could impact the City's ability to enforce certain bylaws if Mrs. Ottosen was successful, and so it was required to "vigorously defend" the claim. However, while the issues may have been important to the City, I find the legal issues involved were not particularly complex. Mrs. Ottosen did not have legal representation of her own, and there is no suggestion that she caused any unnecessary delay or expense. I also find the City's claimed legal

expenses are disproportionate to Mrs. Ottosen's \$500 claim. Overall, I find no extraordinary circumstances to justify ordering Mrs. Ottosen to pay the City's legal fees. In any event, the City provided no supporting evidence of its legal expenses, such as an invoice or a statement from its lawyer about the work involved. For these reasons, I dismiss the City's claim for reimbursement of its legal fees.

ORDERS

27. Within 30 days of the date of this decision, I order Mrs. Ottosen to pay the City \$25 as reimbursement of its CRT fees.
28. The City is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
29. I dismiss Mrs. Ottosen's claims and the City's claim for reimbursement of legal fees.
30. 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. 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