



Civil Resolution Tribunal

Date Issued: April 14, 2023

File: SC-2022-004666

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grantham v. Matell*, 2023 BCCRT 304

BETWEEN:

LYNDA ANN GRANTHAM

APPLICANT

AND:

DEANNE MATELL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This is a dispute about a boat and motor. The applicant, Lynda Ann Grantham, says she stored a boat and motor at her deceased parents' farm property. She says the respondent, Deanne Matell, who is the executrix of her parents' estate, is responsible for allowing the boat and motor to be taken by a 3rd party. The applicant also says the respondent is her landlord and illegally prevented her from accessing her residence,

forcing her to stay in a hotel. The applicant claims \$2,000 for the value of the boat and motor, hotel stay, and locks she broke and replaced while accessing the property.

2. The respondent denies responsibility for the boat, motor, and locks, and says the applicant was not a tenant. I infer she asks that I dismiss the claim.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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.

Residential Tenancy Act

8. The applicant says she had a verbal tenancy agreement about an apartment at her parents' farm prior to their deaths, but acknowledges she had not been living at the farm in over two years. She claims the respondent assumed the role of landlord for that tenancy when the respondent became the estate's executrix. The applicant says while attending the property to collect her personal belongings, she had to stay in a hotel because the respondent would not provide access to the apartment. The applicant also says she had to break and replace the locks after the respondent changed them.
9. Generally, the *Residential Tenancy Act* (RTA) applies to residential tenancies, with the Residential Tenancy Branch (RTB) having exclusive jurisdiction over disputes under section 84.1 of the RTA.
10. The dispute involves an alleged oral tenancy agreement, which I find supports a finding that the dispute falls under the RTB's exclusive jurisdiction. Section 4 of the RTA lists exceptions where the RTA does not apply, but I find none apply here.
11. The question of whether the parties had a residential tenancy agreement, and whether the respondent is a landlord under the RTA, are questions within the RTB's jurisdiction. Similarly, any remedies that may arise from violations of the RTA, such as for restricting access to the property, are addressed by section 7 of the of the RTA (compensation for non-compliance with the RTA).
12. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that is outside the CRT's jurisdiction. This means the CRT cannot resolve disputes that the RTB can resolve under the RTA. So, I find the CRT does not have jurisdiction over the applicant's claims for her hotel and lock costs, and I refuse to resolve them under section 10 of the CRTA.

ISSUES

13. The issue in this dispute is whether the respondent owes the applicant anything for the boat and motor.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. 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. I note the respondent did not provide any documentary evidence, despite having an opportunity to do so.
15. The applicant says she stored a number of personal belongings, including a boat and motor, at her parents' farm property, with her parents' consent. From context, I infer the applicant and the respondent are stepsisters. The applicant's parents undisputedly passed away in 2021.
16. It is undisputed the respondent is executrix for the applicant's parents' estate. In that role, she says while awaiting probate, she shares the farm property's caretaking with her sister, identified variously as TW or TR. The respondent says she gave TW keys to the farm to allow her to help take care of it.
17. The respondent says she has never seen the boat or motor at the farm property, and the parties agree they are currently in the possession of the applicant's ex-husband, KM. The applicant says the boat and motor were a gift to her from KM several years ago. KM is not named as a party in this dispute.
18. The applicant says KM and TW are romantic partners and that TW allowed KM to use the key to remove the boat. The applicant argues since the respondent gave TW a key, the respondent should be responsible as "it is her duty as executrix to secure the estate property and ensure my things are not removed or tampered with" (reproduced as written).

19. While she does not specifically say so, I find the applicant is making her claim under the law of bailment. 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”.
20. For bailment to apply, usually the bailee must voluntarily accept responsibility for the property: see *Litchi v. Landmark Transport Inc. et al*, 2006 BSC 244. Generally, the burden of proof is on a bailee to show they exercised reasonable care with respect to the personal property in all the circumstances: see *Withers v. Sterling Circuits Inc.* (1988), 1988 CanLII 3352 (BC SC), cited in *Harris v. Maltman and KBM Autoworkers*, 2017 BCPC 273.
21. On the applicant’s undisputed evidence before me, I find the applicant’s parents were likely bailees, as they voluntarily stored the applicant’s boat. So, any claim the applicant may have in bailment could have been brought against her parents’ estate. The applicant did not do so, but named the respondent in her personal capacity, and argued in submissions the applicant was responsible in her role as executrix.
22. Was the respondent, in her personal capacity or as executrix, a bailee?
23. I find the bailees’ agreement to be responsible for the boat and motor did not transfer to the executrix in her personal capacity, and there is no allegation that the respondent ever agreed to store or care for the applicant’s boat and motor. So, I find the applicant has not proved the respondent was a bailee in her personal capacity.
24. Further, the applicant has not established when the boat and motor were taken from the farm property. By the applicant’s own evidence, she only discovered the boat and motor were missing at her parents’ funeral. The applicant provided no evidence that the boat and motor remained at the farm property after her parents’ death, when the respondent began to serve as executrix, and the respondent denies having ever seeing the boat and motor while caring for the property. In these circumstances, the executrix cannot speak to the circumstances of the property’s disappearance. So, I find the applicant has not proved that the respondent, in her capacity as executrix, was responsible for the care of the applicant’s boat and motor at any time.

25. Further, the applicant has also not proved the respondent was ever even in a position to care for the boat and motor in her role as executrix, as there is no evidence the boat or motor remained on the farm property at the time of the applicant's parents' death.
26. So, I find the respondent was not a bailee of the applicant in either or personally capacity or as executrix, so is not liable in bailment.
27. Although she does not specifically say so, I also find the applicant's claim includes an argument that the respondent acted negligently.
28. To prove negligence, an applicant must show the respondent owed a duty of care, failed to meet the applicable standard of care, that the failure caused the respondent's loss, and that the loss was reasonably foreseeable. See: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
29. The applicant argues the respondent was negligent by giving TW a key, which allegedly allowed KM to take the boat. I disagree. The applicant has not proved KM used the key to take the boat, but even if she had, I do not find she has proven it was negligent for the respondent to give her sister a key to assist in caring for the property. There was no way for the respondent to reasonably foresee the chain of events that led to KM taking the boat. The applicant makes no other argument about why the respondent was negligent. So, I find the applicant has not proven negligence.
30. Given the above, I dismiss the applicant's claim for the boat and motor.
31. I note even if I were to have found the respondent liable, the applicant did not provide any evidence about the boat or motor's make, model, age, or condition. While she provided some evidence of other boats and motors, I have no information to compare them to. So, her claimed damages would be unproven and her claim regarding the boat and motor would not have succeeded in any event.
32. Neither party paid CRT fees, so make no order about them.

ORDERS

33. I refuse to resolve the applicant's claims for damages for hotel and lock costs under section 10 of the CRTA.

34. I dismiss the applicant's remaining claims.

Christopher C. Rivers, Tribunal Member