



Civil Resolution Tribunal

Date Issued: January 9, 2024

File: SC-2023-000011

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. Milman*, 2024 BCCRT 21

BETWEEN:

ZHIKANG LI

APPLICANT

AND:

RITA MILMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about an alleged assault and battery.
2. The applicant, Zhikang Li, says the respondent, Rita Milman, threw scissors at him and struck him in his abdomen and groin while brandishing the scissors. The

applicant claims \$5,000 in damages for “the physical assault” and “emotional distress during and after the incident.” The applicant represents himself.

3. The respondent denies throwing scissors. She says she dropped the scissors from the balcony above and when she went to retrieve them, the applicant pushed her, so she pushed him back. She also says there is no evidence for the claimed \$5,000 in damages. The respondent is represented by her daughter, OM, who is not a lawyer. OM owned the home where the incident happened.

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.
5. 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 court.

Oral hearing request

6. During facilitation, OM requested an oral hearing. CRT staff asked her to provide reasons for the request. I reviewed those reasons as well as the evidence and submissions provided in this dispute and considered whether an oral hearing was necessary and appropriate. OM said English was not her first language and she did not feel she could describe all the details and relay all the information in writing. She said she felt more comfortable speaking. I accept that, and I accept that language barriers may be a factor weighing in favour of an oral hearing.
7. Another factor that may weigh in favour of an oral hearing is credibility being at issue. This dispute turns in part on credibility because the parties have different recollections of the incident. However, OM did not observe the alleged confrontation and does not

say she has evidence to provide as a witness. OM does not say that the respondent has additional evidence to provide about the incident. To the contrary, OM says that if an oral hearing is held, she hopes the respondent does not have to attend because it would be stressful for the respondent. Given that OM cannot provide direct evidence for the respondent, I do not see how OM's attendance at an oral hearing without the respondent would be useful. In any event, 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. I say this in part because there is video footage that shows almost the entire incident, and in particular, the physical contact between the parties. Another factor I considered is the limited extent of harm the applicant suffered, which limits the possible damages award. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through the written submissions the parties provided.

ISSUE

8. The issue in this dispute is whether the respondent committed assault or battery on the applicant, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this, the applicant must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. The respondent provided no documentary evidence despite having the opportunity to do so.
10. As noted, the respondent's daughter, OM, owned the home where the incident took place. The applicant calls the home his residence, although a March 1, 2021 tenancy agreement lists PS as the tenant and OM as the landlord. I infer from context that the applicant was PS's roommate or romantic partner. In December 2022, the same

month of the incident, OM served PS with 2 Notices to End Tenancy on the basis that the number of occupants was unreasonable and PS had not paid utilities. PS disputed those notices.

11. The incident happened on December 30, 2022, around 11 am. There is video footage of the incident from a camera in the rental unit that was pointed toward the entrance. The video begins around 10 am and shows that a person I find is the respondent knocked on the entrance door and told the applicant he was not allowed to be there. He suggested she call the police. She said, "ok, no problem," and he closed the door. Intermittent banging noises ensued. The applicant says the respondent intentionally caused the noise to above his bedroom to target him, but I cannot tell what caused the noises or whether they were made intentionally.
12. About 40 minutes later, the video shows that the applicant was preparing to take his dog for a walk. He looked for his shoes outside the door and then asked PS if she moved them inside. He went outside again and PS followed. She said her shoes were gone too. The applicant disappeared from the camera's view briefly, then returned and asked PS for his phone, which PS handed him. The applicant then disappeared into the yard again and PS closed the door. The applicant says he asked for his phone to take a photo of the shoes he found in the garbage bin, which I accept given the date-stamped photo of shoes in a garbage bin.
13. While the door was closed, there were thumping sounds. I accept the applicant's evidence that this was the respondent descending the stairs. The respondent said something inaudible, and the applicant responded, "Yeah I know, right? Interesting." PS opened the door and the applicant was standing near the doorway with a hand in his pocket, looking calm. There was another noise and the applicant said, "Whoa, that's a pair of scissors, ma'am. That's a pair of scissors." The applicant says the noise is from when the respondent threw the scissors and they hit the door threshold. The respondent said, "Get out. Get out of here," and the applicant said, "Don't touch me." The respondent then struck the applicant with her hand as he said, "Stop touching me," and "Get back." The respondent said, "Get out" again and struck the

applicant 4 times in the abdomen and groin before he was able to retreat into the rental unit and close the door.

14. Although the scissors are never visible in the video, I accept that the respondent threw the scissors in the applicant's direction. I reject the respondent's evidence that she dropped the scissors from the balcony for 3 reasons. First, she can be heard descending the stairs well before the applicant observes the scissors. Second, I find it would be difficult, if not impossible, to drop the scissors from the balcony and then appear in the doorway in under 7 seconds, particularly without generating any noise descending the stairs. Third, I accept the applicant's evidence that the scissors hit the door threshold. The balcony has a solid floor and the door threshold is directly underneath it, 4 horizontal feet from the nearest edge. I agree with the applicant that scissors dropped from the balcony could not hit the door threshold. I find the respondent threw the scissors in frustration and with the intent to intimidate the applicant, which is consistent with her telling him repeatedly to get out and, earlier that day, that he was not allowed to be there.
15. The respondent says the applicant pushed her while she was picking up the scissors, and she merely pushed him back. In the video, the door was open from the time the applicant first mentioned seeing the scissors, and the applicant remained in view until he closed the door. I find he did not push the respondent.
16. The applicant says the respondent picked up the scissors and was holding them in one hand while striking him with the other. While I am unable to see the respondent's other hand in the video, I accept that she was holding scissors at the time, in part because the respondent concedes that she picked up the scissors and then continued to engage with the respondent. Also, PS can be heard in the video saying, "You have scissors" just before the applicant closes the door.
17. The respondent suggests that the applicant instigated the incident in an attempt to document it for monetary gain. I find there is no evidence the applicant instigated the incident. I note the respondent does not deny throwing the applicant's and PS's shoes

in the garbage bin, believing the applicant was wrongfully occupying the rental unit, or being in an agitated state at time.

Application of the law of assault and battery

18. The applicant frames his claim as being about assault as the word is commonly used. However, assault and battery are distinct torts (legal wrongs). Assault is about threats of imminent harm, while battery is about physical contact. I find there are elements of both here given the respondent was holding scissors and telling the respondent to leave the rental unit, in addition to making physical contact.
19. Battery is a direct, intentional and physical interference with another person that is non-trivial in the sense that it is either harmful or offensive to a reasonable person (see *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24). There is no requirement to prove damage or injury (see *Norberg v. Wynrib*, 1992 CanLII 65 (SCC)).
20. In *Grenier v. Williams*, 2020 BCSC 462, there was an assault and battery. Mr. Grenier forced his way into Mr. Williams' home in a state of anger about an outstanding loan and pushed him. The court found that Mr. Grenier spoke angrily and in a manner that Mr. Williams would have found frightening and disturbing and made direct physical contact, committing both assault and battery. I find the same is true here. The respondent spoke angrily, told the applicant to leave, threw scissors, and struck the applicant repeatedly while holding scissors. I find the respondent's conduct was disturbing and intended to intimidate in the applicant. I also find the contact was offensive to a reasonable person. I find the applicant has proven both assault and battery.

Damages

21. The court in *Grenier* found that the actual force inflicted was not extensive and did not leave any lasting physical harm. The court awarded Mr. Williams a nominal \$500 in non-pecuniary (pain and suffering) damages, mainly to "vindicate the sanctity" of Mr. Williams' home and to deter Mr. Grenier and others in similar situations from

resorting to such actions. Similarly, the force the respondent inflicted here was not extensive. The applicant does not say he was physically injured. Nor does he provide evidence of any lasting psychological impacts. The applicant, who is larger and younger than the respondent, appears calm throughout the video. That said, the respondent's attempt to intimidate an occupant in her daughter's home and force him to move out was misguided and unacceptable. In the circumstances, I find the respondent must pay the applicant \$500 in non-pecuniary damages.

22. Section 2 of the *Court Order Interest Act* says pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses). So, I make no order for pre-judgment interest.
23. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was successful but only recovered a portion of his claimed damages. I find he is entitled to \$87.50 for half his paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

24. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$587.50, broken down as \$500 in damages and \$87.50 in CRT fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.

Micah Carmody, Tribunal Member