Civil Resolution Tribunal

Date Issued: April 30, 2024

File: SC-2023-004833

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goughnour v. Jones*, 2024 BCCRT 411

B E T W E E N :

BRENT LOWEL GOUGHNOUR

APPLICANT

A N D :

MICHAEL JONES

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about responsibility for personal property after the end of a roommate agreement.

2. For a little over 5 years, the applicant, Brent Lowel Goughnour, rented a room in a house from the respondent and owner, Michael Jones. In April 2023, the respondent gave the applicant notice to move out for unpaid rent and uncleanliness.

3. The applicant says the respondent changed how much notice he had, then later disposed of his personal belongings. The applicant claims $5,000 for their value.

4. The respondent says the applicant did not pay rent for April, and when he left, took everything of value, leaving only garbage and junk. The respondent says they were responsible for cleaning the large mess the applicant left behind. The respondent asks me to dismiss the claim.

5. The parties are each self-represented.

6. For the reasons that follow, I allow the applicant's claim, in part.

JURISDICTION AND PROCEDURE

7. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 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.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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. While the parties often fail to address the others' allegations, I find the evidence is generally in harmony and there are no critical points of factual disagreement. So, 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.

9. CRTA section 42 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.

10. Where permitted by CRTA section 118, 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.

11. In the Dispute Notice for this claim Michael Jones was named as Mike Jones. Since the respondent filed a Dispute Response as Michael Jones and because there is no dispute they were the individual in question, I have amended the style of cause above to show Michael Jones as the named respondent.

12. The *Residential Tenancy Act* (RTA) governs residential tenancies. Since the Residential Tenancy Branch (RTB) has exclusive jurisdiction to address RTA disputes, I must determine if the RTA applies.

13. RTA section 4(b) says the RTA does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the landlord. That is undisputedly the case here. Since the RTA does not apply, I find I have jurisdiction to address the dispute on its merits.

ISSUE

14. The issue in this dispute is whether the respondent must pay the applicant for his belongings, and if so, how much.

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant must prove his 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.

16. The parties lived together in the respondent's home from 2018 to 2023, sharing kitchen facilities and common areas.

17. The respondent paid monthly rent, though there is no evidence about how much it was. Neither party provided any records of rent payments.

18. Text messages show friction in the parties' relationship from November 2022 to the end of their roommate arrangement in April. The nature of their disputes varied but were generally about rent and cleanliness.

19. The parties did not have any formal written contract setting out the terms of their roommate agreement. However, the applicant argues the parties had agreed in a January 5, 2023 text message that the respondent would give one month's notice before ending the living arrangement.

20. Having reviewed the text, I find it does not create a binding agreement between the parties. Despite that, it is relevant evidence that I must consider in making my decision.

21. The January 5 text includes complaints from the respondent that they must chase the applicant for rent every month and repeatedly ask him to tidy. The texts ended with a warning from the respondent that the applicant needed to "step it up" or he would get "one month notice" to vacate. The applicant did not provide evidence of his response.

22. For a party to prove a binding contract, they must show offer, acceptance, and consideration. Here, I find there is no evidence to show the applicant agreed to receive 1-month notice or "accepted" it as a contract. The message's context was not a negotiation, but a warning from the respondent to the applicant. I note the applicant does not claim damages for breach of contract, so the precise distinction is largely irrelevant.

23. The respondent says they told the applicant to move out after not paying rent at the beginning of April. The respondent also says the applicant's lack of reasonable care and cleanliness in common spaces was a reason for ending the roommate

arrangement. The respondent did not make a counterclaim for rent or the cost of cleaning the house.

24. On April 8, 2023, the respondent texted the applicant they had someone new moving into the apartment on the “first,” which I infer from surrounding context means May 1. They told the applicant to remove his belongings by that time. The applicant asked for the respondent to put it “in writing,” and the respondent confirmed the text messages were for that purpose.

25. On April 9, 2023, the applicant texted the respondent he was trying to move out by the month’s end but that the respondent was “not letting it happen.” The respondent replied “extending” the date to remove everything to April 20, 2023. The respondent said this is 2 weeks from their initial request that the applicant move out and 3 weeks from when he did not pay rent. This is obviously inconsistent with the respondent’s own April 8 text. On April 10, the respondent asked the applicant to confirm he understood the April 9 message. The applicant replied only “I read it.”

26. While the applicant says he continued to communicate with the respondent after April 10, he did not submit any further documentary evidence, like text messages or emails.

27. On April 20, the applicant says he asked for a 2-day extension to April 22 but received an extension only to 10:00am on April 21. While he says he removed his light fixtures from the home on the night of April 21, I find his subsequent arguments show he likely meant April 20. In either case, nothing turns on the precise date.

28. The applicant says he slept in his car on April 20 and went back into the house the following morning to remove more items. He says he took things outside and then left to take a load to his storage unit. He says when he came back, his expensive audio equipment and some filled baskets had been taken inside the house and the locks had been changed.

29. The applicant says he offered to finish moving and cleaning during the following 10 days but was denied access. He says he was unable to access his belongings, including his pet fish.

30. The applicant submitted evidence from the basement tenant, Chelsea Gimby. Chelsea Gimby says she stored some items for the applicant after his eviction. She also says she retrieved the applicant's work tools from the garbage in May.

31. The applicant also submitted witness evidence from his friend, Nate Rose. Nate Rose says on May 2, 2023, they drove to the house and saw an "open house" style giveaway of the applicant's items. Nate Rose says the door was open, so they personally entered the property. Nate Rose says they saw an aquarium with dead fish. They say they spoke to EC, a person who identified themselves as having been hired by the respondent to move out the applicant's things. Nate Rose says they took some items they thought the applicant would want, such as a gold watch, headphones, and clothing, and left.

32. Chelsea Gimby also said that on May 2, there were a lot of people attending the house to take the applicant's things away. Chelsea Gimby says they spoke to EC and learned the respondent had hired them to remove the applicant's personal belongings.

33. The applicant does not explain why he did not attend the house himself on May 2. The respondent does not deny they prevented the applicant from retrieving his items. The respondent does not challenge the witness statements, address the allegation that they hired EC to remove the applicant's property, and did not provide any statement from EC to provide additional information.

34. On the other hand, the respondent undisputedly hired a lawyer to write a letter to the applicant. On April 28, the lawyer wrote that the respondent would dispose of the applicant's remaining items unless the applicant paid for rent, repairs, and the applicant's labour in removing items from the home. The letter demanded "not less than $2,000" in payment and threatened action at the CRT if the applicant did not comply.

35. Regardless of whether the applicant received it, I find the lawyer's letter confirms the applicant's allegation. The respondent knew they had the applicant's personal items

and refused to return them until they received a sum of money. While the respondent's lawyer correctly says the applicant is not bound by the RTA, they do not assert any legal principle entitling the respondent to hold the applicant's property. While the respondent may have had a claim for unpaid rent it did not entitle them to hold the applicant's things for ransom.

36. I also note the respondent's submissions are contradictory. They say both that the applicant had removed anything of value and that he had not packed a single box. Since the respondent submitted a photograph showing moving boxes, and also says the applicant took his valuable items, I find the applicant knew the respondent was in the process of moving out.

37. To the extent the respondent argues the move out was past any given deadline, I note the respondent's own text messages are inconsistent. They suggest, variously, 1 month, the end of April, 3 weeks, and 2 weeks.

38. Further, despite not being bound by the RTA's strict provisions, I find the respondent still needed to act reasonably when giving notice and allowing the applicant to remove his belongings. While there is no clear agreement about ending the living arrangements, I find there was an implied term of the parties' agreement that the respondent would give the applicant reasonable notice to move out. I find both the January and April 8 texts are evidence that reasonable notice required the respondent to give the applicant until the end of April to move out his belongings. Since the respondent said the new tenant would move in on May 1, I find there was no prejudice to the respondent in allowing the applicant to access his property throughout April. Doing so would not have harmed any claim the respondent had for unpaid rent.

39. So, I find the respondent knew the applicant had not abandoned his personal items.

Conversion

40. Conversion is when someone commits a wrongful act involving handling, disposing, or destroying another person's property, and that act was intended to or actually interfered with the owner's right or title to the property.[1]

41. Here, I find the undisputed evidence is that the respondent prevented the applicant from accessing his belongings, demanded payment to release them, and then hired someone to give away or otherwise remove the belongings. I find these are wrongful acts that interfered with the applicant's property. So, I find the respondent is liable for conversion.

Remedy

42. The usual remedy for conversion is either to return the property or a monetary order for the property's market value. Here, the since respondent says that the applicant left only "junk," I infer they have disposed of his property, and a monetary order is appropriate.

43. The applicant provided an intricately detailed list of over 300 items he says he lost along with an estimate of their monetary value. The list is 6 pages long and items vary in value from $15 BBQ utensils and a $35 bottle of colloidal silver to a $249.99 Turkish rug and a $525 Arcteryx jacket. He marks some items "Amazon," "Canntire," or "Marketplace" which I infer is how the applicant priced them. While he does not attempt place a formal value on his fish, he says he had some of them for a decade.

44. The applicant's list is the sole evidence he has of what items he owned and their values. I note it is not enough to list the name of a store without providing further evidence about the value. I find many, but not all, of the values he provided are for his items' new replacement cost. As I note above, the measure of damages in this case is for the items' market value. Since the items were pre-owned, I find their market value would be lower than their replacement value.

[1] See: *Li v. Li*, 2017 BCSC 1312, at para. 214.

45. The applicant submitted photographs they say they took one week after giving notice. The photos show garbage throughout living areas, the garage, and the kitchen, and personal belongings scattered everywhere. The respondent says the photos show the applicant took the belongings he intended to remove and left behind only garbage. Since the respondent specifically says the applicant left nothing of value behind, I find they dispute the applicant's estimated prices.

46. However, those photographs show a large aquarium, along with its vacuum and stand, all of which undisputedly belong to the applicant. The applicant lists the value of those items as $425, $89.99, and $125, respectively. Similarly, photos show a violin that the applicant values at $149.95. Another shows a vacuum that the applicant values at $159.99. The applicant specifically said his expensive audio equipment was locked away inside when he was moving it out. Nate Rose said the applicant's fish died while the applicant was unable to access them. All of these items are obviously not worthless. So, I find the respondent's statement that the applicant left nothing of value is not credible and I give it little weight.

47. While I acknowledge the challenge the applicant faces in providing values for and proving ownership of such a broad and diverse collection of goods, especially when unable to access the items, the burden is his. In the absence of evidence, and bearing in mind the CRT's mandate for proportionality, I must do rough justice between the parties. I find the evidence in the photographs confirms, at least in part, the applicant's list of goods. I also find the applicant's evidence was about his items' replacement value, not market value. So, a judgement basis, I award the applicant $2,500.

Equitable Set Off

48. While the respondent does not specifically claim a set off, they say the applicant did not pay rent for their final month. They also say they had to clean the mess the applicant left when he moved out. Their lawyer's letter suggests this has monetary value, so I have considered whether a set off may apply.

49. A set off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. A person alleging an equitable set off must prove both their entitlement and their damages.

50. As I note above, neither party provided evidence about the cost of rent. So, I am unable to determine the amount of any damages.

51. Further, I have already found the applicant unreasonably prevented the respondent from accessing the house at the end of April. I agree with the applicant's submission that it would be unreasonable to clean his mess before finishing moving out his things. Since the respondent's unreasonable and inconsistent deadline prevented the applicant from doing so, I find the respondent is not entitled to any set off.

52. The *Court Order Interest Act* applies to the CRT. However, there is no evidence the applicant has paid any money to replace the items, so I order no interest.

53. Under CRTA section 49 and the 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. Since the applicant had partial success, I find he is entitled to $87.50 in reimbursement for half his paid CRT fees.

54. The applicant claimed $150 for disputed-related expenses for 3 witness statements. While he only provided 2 statements, more importantly he did not explain the payments' purpose nor how the amount was determined. So, I dismiss his claim for dispute-related expenses.

ORDERS

55. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $2,587.50, broken down as follows:

    a. $2,500 as compensation for personal property, and

b. $87.50 for CRT fees.

56. The applicant is entitled to post-judgment interest, as applicable.

57. This is a validated decision and order. Under CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member