Civil Resolution Tribunal

Date Issued: May 17, 2024

File: SC-2023-003804

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peterson v. Dapp*, 2024 BCCRT 462

BETWEEN:

LISA PETERSON

APPLICANT

AND:

DUSTIN DAPP and ALISON DAPP

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about an allegedly stolen fence. The applicant, Lisa Peterson, says the respondents, Dustin Dapp and Alison Dapp, improperly took cedar fence panels and a gate with its hardware from her property and refuse to return them. She seeks $2,762.35, what she says she paid to purchase the fence and gate and have them installed.

2. The respondents say the applicant's ex-spouse, NW, gave them the fence. NW is also Dustin Dapp's brother. The respondents deny owing the applicant any money.

3. The parties are each 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.

5. Section 39 of the CRTA says that 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 that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

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.

ISSUE

8. The issue in this dispute is to what extent, if any, the respondents must reimburse the applicant for taking the fence and gate.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.

10. The applicant and NW lived together in a common law relationship for 11 years. In early 2022, they separated. When the applicant and NW separated, the applicant moved out of their home, but allowed NW to remain living on the property until April 30, 2023. In February 2023, NW undisputedly allowed the respondents to remove new portions of a fence installed on the property in the summer/fall of 2021.

11. The applicant says the respondents were not entitled to take her fence, and therefore "stole" it. The respondents say NW gifted them the fence, so they legally removed it from the property.

12. The applicant essentially says NW could not have gifted the respondents the fence because it was not NW's to give. She says this because the fence sat on her property on Squamish Nation Reserve land. Squamish Nation's Housing Policy says that only Squamish Nation members can have a legal interest or rights in any "residence" or "lot". The applicant is a member of the Squamish Nation, but NW was undisputedly not a member. So, the applicant says NW had no interest in the property and could not have given the fence away.

13. The Housing Policy does not specifically outline rules about ownership in a fence on reserve land. However, the Housing Policy says that non-members have no legal interest or rights in any "residence" or "lot". The Housing Policy further defines "residence" as a single family accommodation unit including a house, duplex, townhouse, apartment or manufactured home, and "lot" as a surveyed lot and any permanent improvements on the lot. "Permanent improvements" are defined as any permanent structure added to or built on a lot which will form part of the lot.

14. The applicant says the fence was a fixture, and formed part of the lot, of which she is the only owner. In a statement provided in evidence, NW says they paid for and owned half of the fence, and while still living in the home, gifted the fence to the respondents.

15. So, is the fence a "permanent improvement"? In *Thompson v. Hay*, 2024 BCSC 583, the court found that a fence may be a "structure". The court considered that the subject fence was something built from component parts, installed both on and in the land, and was intended to be permanent (see: paragraph 159). I find the same reasoning applies here. The evidence is that the fence was installed both in, and on top of, the land. The fence's posts remain cemented into the applicant's lot, and I am satisfied the fence was intended to be permanent on the lot. On balance, I find the fence was a permanent structure, and therefore a permanent improvement to the applicant's on-reserve lot.

16. In their statement, NW alleged they financially contributed to the original fence. The Housing Policy states that where a non-member gives money to a member spouse for construction of their residence, the non-member does not acquire any rights of use or occupation to the residence or lot. Instead, the non-member must arrange any settlement about the monetary contribution directly with the member. This means, to the extent NW may have an interest in some portion of the fence's value, they must pursue that claim with the applicant directly. I note that may be an issue about "family property" under the *Family Law Act* or of "matrimonial interests or rights" under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*. Those matters are outside the CRT's jurisdiction, and I make no findings about whether NW is entitled to any compensation from the applicant.

17. In summary, the Housing Policy says NW, as a non-member, had no legal interest or any right in the fence, and therefore had no right to gift the fence to the respondents.

18. The applicant's claim against the respondents is in "conversion". Conversion involves wrongfully holding on to another person's property and claiming title or ownership of that property. The elements of conversion are:

a. The respondents committed a wrongful act involving the applicant's property, inconsistent with the applicant's rights to it,

b. The act must involve handling, disposing of, or destroying the property, and

c. The respondents' actions must have had the effect or intention of interfering with or denying the applicant's right to use the property.

(see: *Li v. Li*, 2017 BCSC 1312 at paragraphs 213 to 214).

19. Here, I find that by removing the fence from the applicant's property, the respondents handled her property in a way that interfered with her right or title to it. The tort of conversion is a strict liability tort, which means that it does not matter if a party innocently or mistakenly acts to interfere with an owner's right or title to property (see: *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51 at paragraph 3). In other others, it does not matter if the respondents honestly and mistakenly believed NW was able to gift them the fence. I find the respondents committed a wrongful act in removing the fence.

20. The next question is damages. Although the respondents say they still have the fence panels and could return them, I find monetary damages are more suitable as the fence's current condition is unknown. The applicant claims $2,762.35 for the fence, which includes $1,235 for the fence panels and $1,527.35 for labour, both amounts are supported by evidence. Although NW's statement alleged the supporting evidence is "falsified", the respondents provided no other evidence about the cost to replace the fence. On balance, I find $2,762.35 a reasonable amount. I order the respondents to pay this amount. As the fence was relatively new and the respondents do not argue betterment, I make no reduction to that amount.

21. The applicant is entitled to pre-judgment interest on the $2,762.35, under the *Court Order Interest Act*. Calculated from February 16, 2023, the date the respondents removed the fence, this equals $168.70.

22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the applicant was successful, the respondents must reimburse her $125 in paid tribunal fees. The applicant also claims $448.35 in dispute-related expenses for a process server, which I find were reasonable and supported by receipts in evidence.

ORDERS

23. Within 15 days of the date of this decision, I order the respondents to pay the applicant a total of $3,504.40, broken down as follows:

    a. $2,762.35 in damages,

    b. $168.70 in pre-judgment interest under the *Court Order Interest Act*,

    c. $125 in tribunal fees, and

    d. $448.35 in dispute-related expenses.

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

25. This is a validated decision and order. 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 that court.

Andrea Ritchie, Vice Chair