



Civil Resolution Tribunal

Date Issued: June 14, 2024

File: SC-2023-002695

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *KC v. KS*, 2024 BCCRT 551

BETWEEN:

KC

APPLICANT

AND:

KS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about a cell phone. The applicant, KC, says the respondent, KS, stole her phone and intended to sell it. The applicant seeks repayment for the cost of the phone and for monthly service charges totaling \$1382.59. The applicant represents herself.

2. The respondent says they confiscated the phone from the respondent's son, AD, to comply with a court order and that the applicant has possession and use of the phone. The applicant is AD's grandparent. The respondent represents themselves.
3. I have anonymized the parties' identities to protect the identity of a non-party minor child.
4. For the reasons that follow, I dismiss the applicant's claim and this dispute.

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.
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.

ISSUE

9. The issue in this dispute is whether the respondent has kept the applicant's phone, and if so, what the damages are.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove her claim on a balance of probabilities, meaning more likely than not. While I have read all the parties' submissions and evidence, I refer only to the evidence and argument that I find relevant to provide context for my decision. The applicant did not provide any final reply submissions, despite the opportunity to do so.
11. The applicant set up a family mobile plan with her son, TD, and her grandson, AD, on March 31, 2021. AD went to the respondent's house on April 8, 2021, as a part of a custody agreement between the respondent and TD. The applicant says that the respondent confiscated the phone from AD and has since refused to return it. The applicant submitted an e-mail dated April 25, 2021, between the respondent and TD, to prove the respondent took the phone from AD.
12. The applicant says that she made several attempts by e-mail, phone, and in person to get the phone. The applicant did not provide any evidence of these attempts.
13. The applicant provided 27 partial monthly statements from Virgin Mobile dated between April 2, 2021, and June 2, 2023. The applicant says that she has continued to pay the monthly service charges despite not having use of the phone. None of the monthly statements show the applicant's or anyone else's name as an account holder. The applicant only provided the last two pages of each monthly statement. I find that the partial monthly statements do not prove the applicant owns the phone.
14. The respondent says this is not a CRT matter or a small claims matter. The respondent says this is a family court matter between the respondent and TD. Since the applicant is not a party in the family court matter, I find that I am able to consider the applicant's dispute.

15. The respondent said a November 3, 2020, court order prohibited telephone contact between TD and AD during the respondent's parenting time. The respondent says that the phone was secretly given to AD. Neither party provided a copy of the court order. The applicant did not deny the existence of the court order.
16. In any event, the respondent says that the applicant still has the phone and that the missing pages of the monthly statements would show the applicant's ongoing use of the phone. The respondent does not say when they returned the phone to the applicant. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference against them. An adverse inference is when a decision maker, like the CRT, assumes that a party failed to provide evidence because the missing evidence would not have supported their case.
17. I accept the respondent's submission that complete monthly statements would show the applicant's continued use of the phone. Therefore, I make an adverse inference against the applicant for failing to provide complete monthly statements.
18. The CRT does not have jurisdiction over theft under the *Criminal Code*. However, I can consider whether confiscating the applicant's phone from AD amounts to the tort of conversion (the wrongful interference with another person's property). To prove the tort of conversion, the applicant must show a wrongful act by the respondent involving the applicant's phone. This wrongful act must interfere with the applicant's use of the phone (*McKnight v. Hutchinson*, 2019 BCSC 944).
19. Based on the April 25, 2021, email, I find that the respondent confiscated the applicant's phone from AD. However, I find that the respondent confiscated the phone to comply with the court order that prohibited the applicant's son, TD, from contacting AD during the respondent's parenting time. Therefore, I find that the respondent's confiscation of the phone was not a wrongful act.

20. As noted above, the applicant did not reply to the respondent's submission that the applicant has possession and ongoing use of the phone. Therefore, I accept the respondent's version of events that they returned the phone to the applicant.

21. In summary, I find that the applicant has not proved that the respondent kept the phone. In addition, I find that the applicant has not proved she was the phone's owner. For these reasons, I dismiss the applicant's claim.

22. 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. The respondent was successful but did not pay CRT fees. The applicant also did not pay CRT fees. Neither party claims dispute-related expenses.

ORDER

23. I dismiss the applicant's claim and this dispute.

Mark Henderson, Tribunal Member