



# Civil Resolution Tribunal

Date Issued: June 27, 2024

File: SC-2022-008511

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Derbas*, 2024 BCCRT 615

BETWEEN:

TARA LEE

**APPLICANT**

AND:

MICHAEL DERBAS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This is a decision about personal belongings at an RV park site.
2. The applicant, Tara Lee, seeks compensation for personal items that the respondent, Michael Derbas, disposed of.

3. Mr. Derbas says these items were of little value and Ms. Lee did not return to collect them, though he provided an opportunity to do so.
4. The parties are each self-represented.

## **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.
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 I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
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 court.
8. Although this dispute relates to personal property at a pad rental in an RV park, I find that the claim does not arise from rights and obligations under the *Manufactured Home Park Act*. Instead, I find the claim relates to personal property, which is within the CRT's small claims jurisdiction.
9. 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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Did Mr. Derbas improperly dispose of Ms. Lee's items?
  - b. If so, what are Ms. Lee's damages?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Lee 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.
12. Ms. Lee resided for a time at an RV park that Mr. Derbas operates. She says that Mr. Derbas removed belongings from her residence. She seeks \$5,000 to cover the replacement cost of these items and the cost of recovering her 2 vehicles from a tow yard. Mr. Derbas says the items were of little value and he incurred costs in disposing of them and cleaning up debris. Mr. Derbas did not file a counterclaim, though he had an opportunity to do so.
13. Mr. Derbas said that Ms. Lee did not consistently pay her rent and did not follow the park's rules. Mr. Derbas provided an April 18, 2022, letter, labeled "eviction action" informing Ms. Lee that her tenancy ended on April 15, 2022, and instructing Ms. Lee to remove her belongings immediately. Based on photos and videos provided by both parties that show an absence of an RV at the site in question, I conclude that sometime between April 18, 2022, and May 7, 2022, Ms. Lee stopped residing at the park, but that many items were left behind. The photos and videos show that Mr. Derbas began disposing of some items on May 8 or 9, 2022. Mr. Derbas informed Ms. Lee by letter that he would store her items until May 20, 2022.
14. Ms. Lee says that Mr. Derbas did not have a right to remove her belongings. She asks for compensation to replace items that were at the RV park site, including cat carriers, a propane tank, a red chair, a child's wagon, camping equipment, items

necessary for her traffic control business, and educational materials. Ms. Lee explains that many of these items were important to her personally and professionally. Ms. Lee provided one file marked “some yard stuff prices” that I could not open, however, I determined there was no need to ask Ms. Lee to resubmit the file as the itemized lists are ultimately not relevant to my decision. Ms. Lee also asks for the costs associated with recovering 2 vehicles that Mr. Derbas had towed from the RV park.

15. Mr. Derbas provided significant photo and video evidence relating to Ms. Lee’s conduct while residing at the RV park. I note that much of this is not relevant to resolving this dispute, other than demonstrating that many of the items Ms. Lee seeks to have replaced were at the RV park site on May 8<sup>th</sup> or 9<sup>th</sup>.
16. Ms. Lee says she retrieved some items in early May and returned a month later to collect more. She does not say why she was not able to retrieve the rest of her items when she returned at that time.
17. As Ms. Lee says Mr. Derbas did not have a right to dispose of her items, I find the tort of conversion applies. Conversion is when a person wrongfully handles, disposes of, or destroys another person’s personal property in a way that is inconsistent with the owner’s rights: see *Li v. Li*, 2017 BCSC 1312 at paragraph 213. For conversion to apply, Ms. Lee must prove that Mr. Derbas’ act was “wrongful,” which means it must be unjust, unfair, or harmful: see *Charbonneau v. Mundie’s Towing*, 2008 BCPC 239 at paragraph 13. I find Mr. Derbas is essentially arguing that it was not wrong to dispose of Ms. Lee’s items because she abandoned them. As the party seeking to rely on the abandonment principle, Mr. Derbas bears the burden of proving it: see *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30.
18. Factors to consider when determining whether personal property has been abandoned include the passage of time, the nature of the transaction, the owner’s conduct, and the nature and value of the property (*Jackson* at paragraph 30). Applying these factors, I find the following indicates that Ms. Lee abandoned her items:

- Ms. Lee was informed that she was no longer a tenant and asked to remove her belongings on April 18<sup>th</sup>, approximately three weeks before Mr. Derbas disposed of some items.
- While Ms. Lee states that the eviction notice dated April 18<sup>th</sup> was not valid, she has not provided evidence that she disputed this notice under the *Manufactured Home Park Tenancy Act*.
- Ms. Lee's items were left unsecured in an unoccupied site.
- After Ms. Lee retrieved some items in early May, a month passed before Ms. Lee returned. She does not explain why she did not return sooner.

19. I note that Ms. Lee states that she did not abandon her items. However, based on the above, I find she had no reason to believe that Mr. Derbas would continue to store her items on the RV park property past the May 20<sup>th</sup> date given in his letter. I find Ms. Lee abandoned her items, so I find Mr. Derbas did not act wrongfully when he disposed of them, and he is not liable in conversion.

20. I also considered whether the law of bailment applies to this dispute. A bailment is a temporary transfer of personal property for safekeeping to another person, known as the "bailee". A bailee may be liable for loss or damage to the property in their safekeeping. However, for bailment to apply, the bailee must voluntarily accept responsibility for the property: see *Litchi v. Landmark Transport Inc. et al*, 2006 BCSC 344. In this case, Mr. Derbas did not agree to accept responsibility for Ms. Lee's personal property. I say this because of the April 18<sup>th</sup> letter instructing Ms. Lee to remove her belongings. Though Mr. Derbas later stored her items for a period, I find this was a goodwill gesture given the circumstances and not due to a change in his lack of willingness to take responsibility for her belongings.

21. As Mr. Derbas did not act wrongfully in disposing of Ms. Lee's items, I find she is not entitled to replacement or recovery costs, and I dismiss her claims.

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. Neither party paid fees and Mr. Derbas claimed no dispute-related expenses, so I make no order.

## **ORDER**

23. I dismiss Ms. Lee's claims and this dispute.

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Maria Montgomery, Tribunal Member