



# Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2023-004515

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Munro v. Bolster*, 2024 BCCRT 618

B E T W E E N :

ALEXANDER MUNRO

**APPLICANT**

A N D :

SHELLEY BOLSTER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about destruction of a landing and stairs by a mobile home and a fence surrounding the home's lot. I refer to the landing, stairs, and fence together as the "improvements."

2. The applicant, Alexander Munro, says the respondent, Shelley Bolster, destroyed and threw out the improvements without his permission. The applicant claims \$5,000 in damages for the cost of replacing the improvements and for the risk to his family caused by their removal.
3. The respondent says the improvements were on her property and were poorly maintained. I infer she argues that means she was entitled to remove them. She asks me to dismiss the applicant's claim.
4. The parties are each self-represented.
5. For the reasons that follow, I allow the applicant's claim in part.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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, the primary issues do not engage the parties' credibility. The documentary evidence and submissions allow me to determine the matter with confidence. 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.
8. 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.

9. 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.

## ISSUE

10. The issue in this dispute is whether the respondent must pay the applicant for removing the improvements, and if so, how much.

## EVIDENCE AND ANALYSIS

11. 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.

### *The Improvements' Location*

12. When the actions that caused this dispute arose, the parties were neighbours in a mobile home park. Each party owned a mobile home and rented a pad and lot from the park.
13. Photos show the applicant's mobile home had a small stairway with railings leading to its rear entrance. It had a perimeter fence that separated the applicant's lot from the respondent's lot. In her submissions, the respondent says a previous owner built the improvements in 2008. The previous owner's emailed statement confirms they asked the respondent for permission to build the stairs. However, I find that statement does not prove the previous owner was **required** to ask for permission.
14. In an emailed statement, the park manager, S, explains that pad rental includes 3 feet of property around a person's mobile home. They say while many renters allow their neighbours to use the 3 feet, others fence it off. So, I find the applicant could determine how they used the 3 feet of space around the perimeter of their home.

15. In an emailed statement, the mobile park's owner, LB, says the park allowed the respondent to rent additional space surrounding her mobile home. They say the additional rented space ended 3 ½ feet from the applicant's mobile home. A diagram, drawn by the respondent when she rented the additional space, shows the rented property lines. It shows the edge of the respondent's additional space ending 3 ½ feet away from the applicant's mobile home.
16. LB says the applicant's improvements were all within the 3 ½ feet from his mobile home. The respondent does not dispute the improvements' precise location but argues that she rented the property right up to the back of the applicant's mobile home.
17. One significant challenge for the respondent is that she does not provide any evidence showing she rented the property within 3 ½ feet of the applicant's mobile home. The evidence from the park owner and manager is that she did not, and her own hand-drawn diagram shows she did not. So, I find her rented space ended before the applicant's improvements.

### ***Removal***

18. The parties agree that on April 5, 2023, the respondent removed the improvements from the applicant's back entrance. On April 6, the respondent disposed of the improvements. The applicant says he first discovered the improvements were missing on the morning of April 7.
19. The respondent says she only allowed the former owner to build the improvements for use as a fire exit. She says she removed the improvements because they were on her rented pad, poorly maintained, and used for reasons other than emergencies.
20. On April 17, S marked off the boundary around the applicant's mobile home.
21. On April 28, the applicant began to build a new staircase. The applicant says his insurance required him to have a second exit from the mobile home. While the

applicant measured, the respondent and her partner confronted the applicant. The applicant stopped planning the improvements.

22. Instead, the park built the applicant a temporary rear staircase and landing. The park ultimately sought, and received, a September 21, 2023 order from the Residential Tenancy Board (RTB) evicting the respondent. The RTB cited the respondent's damage of the applicant's property as a reason, along with the respondent's physical aggression and verbal abuse.

### ***Conversion and Negligence***

23. The applicant argues the respondent is liable in conversion and negligence. He claims \$3,360 for the cost of replacing the improvements, and the balance for the risk he had of living in the mobile home without them. Since I find the applicant is liable in conversion, I have not considered the negligence claim.

24. Conversion is when a person wrongfully interferes with another person's belongings in a way that is inconsistent with the other person's ownership.<sup>1</sup> The elements of conversion are:

- a. The respondent 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 respondent's actions must have had the effect of interfering with or denying the applicant's right to use the property.<sup>2</sup>

25. Here, I find the respondent wrongfully removed the applicant's improvements and disposed of them. In doing so, she prevented the applicant from using the property.

26. So, I turn to damages.

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<sup>1</sup> See: *Ast v. Mikolas*, 2010 BCSC 12.

<sup>2</sup> See: *Li v. Li*, 2017 BCSC 1312, at paras. 213 to 214.

27. The applicant obtained a quote for \$3,360 to replace the improvements. The respondent says the former owner who built the stairs and landing did so for under \$100 and was able to get a discount on sign plywood and 2x4s. She says the original fence was not attached with postholes to the ground.
28. However, a statement from the former owner who built the improvement does not include any of that evidence. Further, even if the original builder was able to build the improvements cheaply, that does not mean the cost of replacing the improvements now is the same, or that the applicant has access to the same discounts.
29. The respondent's arguments about the fence's postholes and the use of sign plywood are about the issue of betterment.
30. Betterment arises when ordering the full cost of replacing an item would provide a person with an item of greater value than what existed before the breach. While the cost of repair or replacement is the starting point, I must consider pre-loss depreciation or post-loss betterment, depending on what is reasonable in the circumstances.<sup>3</sup>
31. The applicant provided photographs of the improvements in 2021. Those photos show the improvements are clean, well-maintained, and free of obvious damage. The respondent provided other, undated photographs, but they do not help her. To the contrary, I find they show the improvements are still in good condition. The respondent provides no other evidence disputing the amount, such as other quotes. So, I find the respondent has not shown betterment. I find the applicant's quote is reasonable, and I order the respondent to pay the applicant \$3,360.
32. The remainder of the applicant's claim is for the applicant's claimed "risk" while the improvements were gone. I find these are a form of "non-pecuniary" damages, which are those awarded for intangible losses, like pain, suffering, loss of enjoyment, and mental anguish.

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<sup>3</sup> . See: *Laichkwiltach Enterprises Ltd. v. F/V Pacific Faith (Ship)*, 2009 BCCA 157 at paras 38-40.

33. Here, the applicant says the respondent's actions could have hurt him or his family. The applicant does not say that anyone was actually hurt and does not provide evidence of any actual loss. Since the applicant did not suffer any loss, I find he is not entitled to further damages.
34. The *Court Order Interest Act* applies to the CRT. However, there is no evidence the applicant has already paid to replace the improvements. So, I find the applicant is not entitled to pre-judgement interest.
35. 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. Here, I find the applicant was substantially successful and is entitled to reimbursement of \$175 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

36. Within 21 days of the date of this order, I order the respondent to pay the applicant a total of \$3,535, broken down as follows:
- a. \$3,360 in damages to replace the improvements, and
  - b. \$175 in CRT fees.
37. The applicant is entitled to post-judgment interest, as applicable.

38. 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.

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Christopher C. Rivers, Tribunal Member