



Civil Resolution Tribunal

Date Issued: July 10, 2024

Files: SC-2023-002592
and SC-CC-2023-010847

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gall v. Harding*, 2024 BCCRT 659

B E T W E E N :

PATRICK JOHN GALL

APPLICANT

A N D :

JILLIAN HARDING

RESPONDENT

A N D :

PATRICK JOHN GALL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This decision is about two linked disputes that are a claim and a counterclaim between former romantic partners.
2. In dispute SC-2023-002592, Patrick John Gall says that when he and Jillian Harding¹ broke up, they initially shared ownership of a dog named Huxley, but that Jill eventually refused to allow him to see the dog. Patrick says that Huxley is his dog and asks for an order that Jill return Huxley to him permanently. Jill, on the other hand, says that Huxley is, and has always been, her dog.
3. In dispute SC-CC-2023-010847, Jill alleges that after they broke up, Patrick refused to return many of her personal belongings. She also says that Patrick made her pay a \$260.74 storage fee for the time her furniture and other belongings remained in his home between the date they broke up and the date she was able to rent a truck to move her belongings out. Jill seeks a total of \$4,500 in damages for the alleged value of the unreturned items and for the allegedly improperly charged storage fee.
4. Both parties are 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). 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.

¹ The CRT has a policy to use inclusive language. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure the CRT addresses them respectfully throughout the process, including in published decisions. Patrick John Gall indicated his pronouns are he/him/his and his preferred name is Patrick. Jillian Harding indicated her pronouns are she/her and her preferred name is Jill. Neither party provided their titles. So, I will refer to each party by their preferred first name, intending no disrespect.

6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In these disputes, both parties question each other's credibility, or truthfulness. However, disputes that involve an assessment of the parties' credibility do not necessarily require an oral hearing.² I note neither party here requested an oral hearing. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear these disputes through written submissions.
7. 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.
8. Where permitted by CRTA section 118, in resolving disputes 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

9. The issues in these disputes are:
 - a. Does the CRT have jurisdiction over these disputes?
 - b. If the CRT does have jurisdiction, who is Huxley's rightful owner?
 - c. Did Patrick unlawfully keep Jill's personal property? If so, what remedies are appropriate?
 - d. Is Jill entitled to the \$260.74 storage fee's return?

² *C.2K Holdings Ltd. v. The Owners, Strata Plan K 577*, 2019 BCSC 1981 at paragraph 33.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Patrick must prove his claims on a balance of probabilities, meaning more likely than not. Jill must prove her counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

Are the parties' claims outside the CRT's jurisdiction?

11. As noted above, the claims in these disputes are about ownership and possession of Huxley, Patrick's alleged failure to return Jill's personal property to her, and a disputed storage fee.
12. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues. Here, Jill argues that the parties lived together in a marriage-like relationship for more than 2 years. The amount of time the parties lived together in a marriage-like relationship is important because if they did so continuously for at least 2 years, they are considered "spouses" under the *Family Law Act* (FLA).
13. Under the FLA, property (including pets) that is owned by at least one spouse on the date of separation is "family property". Disputes about the division of family property are within the exclusive jurisdiction of the British Columbia Supreme Court under FLA sections 88 and 94. So, if the parties are spouses, then only the BC Supreme Court may make an order about who owns Huxley and about the personal property that Jill says Patrick failed to return to her. So, I must first decide whether the CRT has jurisdiction over the parties' claims.
14. The parties agree that they acquired Huxley in early August 2020 during their romantic relationship, which lasted from July 3, 2020 to August 31, 2022. They also agree that they lived together for a portion of their relationship, but they disagree about exactly how long they cohabited.

15. In an affidavit, Jill says that she moved in with Patrick on August 18, 2020, following an altercation at her workplace between a former romantic partner and her coworker. She says that after the altercation, Patrick told her to move in with him while she searched for a place that would allow dogs that she could rent with a friend, SM. Jill says that those plans did not work out and she continued living with Patrick until August 31, 2022.
16. Patrick, on the other hand, says the parties did not officially start living together until December 2020. It is undisputed that this is when the parties decided they wanted to live together permanently. December 2020 is also when Jill started to contribute to the rent for the parties' shared home.
17. The burden of proof lies on the party advancing the position that there was a marriage-like relationship³. In *Weber v. Leclerc*, 2015 BCCA 492, the court said the parties' intentions, "particularly the expectation that the relationship will be of lengthy, indeterminate duration" are an important consideration. Those express intentions should also be tested against objective evidence to see if the two are consistent.⁴
18. Here, based on the evidence before me, I accept that the parties were dating and likely lived together starting in mid-August 2020. However, it is clear that neither of them intended their cohabitation to be permanent until December 2020. Before that time, Jill's intention was to find a place that would allow dogs for her and SM to move into together. Parties can cohabit while dating without it being characterized as marriage-like⁵. Although the parties were dating in August 2020, I find the evidence does not show that they intended to start a marriage-like relationship at this time. Rather, I find it more likely than not that the parties considered themselves to be boyfriend and girlfriend, not spouses.
19. So, given the parties did not appear to intend their cohabitation to be permanent until December 2020, and the lack of any other persuasive evidence suggesting that they

³ *L.T.F. v. R.B.F.*, 2023 BCSC 834 at paragraph 79, citing *Armstrong v. Scholz*, 2022 BCSC 863 at paragraph 34.

⁴ See paragraph 23.

⁵ *L.T.F.* at paragraph 95.

were in a marriage-like relationship before this time, I find it unproven that the parties were in a marriage-like relationship and resided together as such for more than 2 years. As a result, the FLA does not apply, and I find the CRT has jurisdiction to decide these disputes.

Must Jill return Huxley to Patrick?

20. I start first with Patrick's claim for Huxley's return. The courts have recognized the unique place pets occupy in peoples' lives⁶. Even so, legally, pets are considered personal property, and the principles of property law generally apply to pet ownership. This means when pet-owners separate and there is a dispute about the pet, the question is who owns the pet, rather than who should have "custody" of it.
21. In *Almaas v. Wheeler*, 2020 BCPC 51, the court reviewed the law governing competing pet ownership claims. The court found factors to consider in determining ownership include who bought and selected the pet, whether it was bought as a gift, who attended its veterinary appointments, who paid for the pet's needs, who licensed it, and how the parties viewed ownership. Other factors courts have considered include who bore the burden of the pet's care and comfort, agreements about ownership when the pet was acquired or after, and what happened to the pet after the parties' relationship changed⁷. This list is not exhaustive, and no single factor is necessarily sufficient to establish ownership.
22. Under recent changes to the FLA, the Supreme Court must now consider the willingness and ability of each spouse to care for the pet's basic needs, cruelty or threat of cruelty towards a pet, family violence, and other factors. While the FLA does not apply to here, these changes reflect developments around the common law "best interests of the pet assessment". Courts have increasingly considered animal welfare and the animal's needs in considering ownership claims.⁸

⁶ See, for example, *Atwal v. Randhawa*, 2023 BCPC 238 at paragraphs 15 and 16.

⁷ *MacDonald v. Pearl*, 2017 NSSM 5 at paragraph 25.

⁸ See, for example, *Atwal*, and *Munce v. Livingston*, 2022 BCPC 108.

23. As noted above, Patrick argues that Huxley belongs to him because he is the one that paid for the dog. He notes that the bill of sale for Huxley's purchase lists him as the buyer. Patrick says that he paid for Huxley because it was understood that he would be Huxley's sole owner. Jill does not dispute that Patrick paid the initial \$300 deposit for Huxley on July 27, 2020 and the remaining \$1,000 on August 7 when he went to pick Huxley up from the breeder in Alberta. However, she denies ever agreeing to Patrick having any ownership interest in Huxley. Instead, she says that the parties agreed before purchasing Huxley that if they ever broke up, she would keep the dog and that Patrick gave Huxley to her as a gift.
24. The evidence shows that in June 2020 the parties discussed potentially getting a dog. In a June 12 text message exchange Jill questioned what would happen to the dog if she and Patrick broke up. Patrick unequivocally answered that Jill would keep the dog. He reiterated that he had told Jill this before, and that he would "stand by it". This exchange occurred before Huxley's purchase and prior to the parties formalizing their romantic relationship. However, I find these messages indicate a clear intention from both parties that Jill would be the sole owner of any dog they purchased in the future, should they break up.
25. Further, text messages between the parties from August 6, 2020, the day before the purchase, show that Jill asked Patrick for his email address in order to e-transfer him for "the dog". In response, Patrick told Jill not to worry about it and that he thought Jill was referring to paying him for the flight "or something". Jill said she would pay for that too and Patrick told her no, that he would not take an e-transfer from her. Jill then said she would hide the cash in Patrick's house. He asked her not to and said that he would never find it. When Patrick returned with Huxley to the airport the next day, he texted Jill saying that he had just landed. Jill told Patrick that she had just parked and asked "where's my dog". In her affidavit, Jill says that when she met Patrick at the airport, he handed Huxley to her and said "here's your dog".
26. The evidence also includes an affidavit from Jill's long-time friend, KB, who lived with Jill and Patrick for 2 weeks in October 2021. In this affidavit, KB says that while

residing with the parties, they had a conversation with Patrick where he said that Huxley had a stronger bond with Jill, which made sense since he had purchased Huxley for Jill and Huxley was her dog. Similarly, SM provided an affidavit where they described a conversation with Patrick on September 9, 2020. SM says that on this date, they asked Patrick “so you just bought Jill a dog?” to which Patrick responded that he did because he loves her.

27. Patrick argues that I should give no weight to KB and SM’s evidence since they are not neutral. While they are not entirely neutral witnesses, I find this does not mean that their evidence should be disregarded. Here, Patrick has provided no evidence to rebut or contradict KB and SM’s evidence. So, I give their evidence considerable weight.
28. Next, I accept that Huxley lived at Patrick’s home from the date of purchase until the parties separated. However, I find the evidence shows that Jill had intended to find a new place to live with SM that allowed dogs (since Jill’s apartment in August 2020 did not), and once they found a suitable apartment, Jill would have taken Huxley with her. I find all of the above suggests that the parties never intended for Patrick to have any ownership rights in Huxley. Since Patrick refused to allow Jill to pay for Huxley, I find he purchased Huxley for her as a gift and he delivered that gift to her at the airport when he said, “here’s your dog”.
29. I note that in September 2022, after the parties broke up, they exchanged a series of messages in which Patrick essentially demanded that Jill pay him \$1,200 for Huxley. In the messages, the parties agreed that Patrick could keep Jill’s couches, which they agreed were worth \$500, and Jill would pay him the remaining \$700. Jill says she tried to pay the \$700 but Patrick repeatedly refused, demanding that they both now owned Huxley. Once a gift is made, the gift cannot be revoked⁹. So, despite this purported agreement, I find that Patrick has no ownership interest in Huxley.

⁹ *Bergen v. Bergen*, 2013 BCCA 492 at paragraph 41.

30. In conclusion, I find Patrick has failed to show any basis on which to order returning Huxley to him and I dismiss his claim.

Did Patrick unlawfully keep Jill's personal property?

31. I turn now to Jill's counterclaim. As noted, Jill says that she left behind many personal belongings after she moved out that Patrick has refused to return to her. She alleges that by doing so, Patrick committed the tort of conversion. Conversion is when a person wrongfully handles, disposes of, or destroys another person's personal property in a way that is not consistent with the owner's rights.¹⁰ For conversion to apply, Jill must show that Patrick's act was "wrongful", meaning it must be unjust, unfair, or harmful.¹¹

32. Patrick does not dispute that Jill left behind a cruiser bike and 2 Costco camping chairs. He says these have been, and I infer still are, available for Jill to pick up, but she has not done so. Based on February 21, 2023 text messages in evidence, I accept that Patrick told Jill that her camping chairs and bike were available for pick-up anytime. Jill does not say that she made any attempts to retrieve these items, and I find the evidence does not show that Patrick has interfered with Jill's ownership rights over the bike and chairs. So, I find conversion unproven. As a result, I find Jill is not entitled to damages for these items. Instead, since Patrick agrees these items belong to Jill, I order him to return the bike and camping chairs to her.

33. In the same February 21 message exchange, Patrick told Jill that her Ray-Ban aviator sunglasses must be lost. Based on the text exchange, I find it more likely than not that Patrick lost the sunglasses while they were in his possession. So, I find Jill is entitled to damages for the sunglasses in conversion. Jill claims \$270 for them. However, in the text messages, Patrick said the sunglasses were over 10 years old, which Jill does not dispute. Given the sunglasses were not new, I find awarding Jill the full replacement cost of new sunglasses would be over-compensating her. So, on a judgment basis, I find Jill is entitled to \$100 for the unreturned sunglasses.

¹⁰ *Li v. Li*, 2017 BCSC 1312 at paragraphs 213 and 214.

¹¹ *Charbonneau v. Mundie's Towing*, 2008 BCPC 239 at paragraph 13.

34. Next, it is undisputed that Patrick still has 2 couches that Jill says were gifted to her by her mother in 2018. These are the same couches the parties discussed in their September 2022 text messages mentioned above. Somewhat confusingly, Patrick says that Jill's parents gifted these to both of them when Jill moved in.
35. I find it unlikely that Patrick would have agreed to purchase the couches from Jill had they been gifted to both of them as Patrick asserts. I find it more likely than not that Jill brought these couches with her when she moved in. So, by asserting that he is entitled to keep them, I find Patrick is liable in conversion. As noted above, the parties previously agreed the couches are worth \$500. I acknowledge that Jill does not agree with this value and suggests they are worth much more. However, I find this unproven on the evidence before me. So, I find Jill is entitled to \$500 in damages for the couches.
36. Jill says that she also bought toys and accessories for Huxley that she did not receive back from Patrick. In particular, she says Patrick still has a life jacket, food and water bowls, toys, leashes, and a harness, which she values together at \$216. Patrick says that he paid for the life jacket. He admits that Jill bought the food and water bowls but says that she never requested them back. He further says that he and Jill both purchased toys, leashes, and harnesses, and Jill took half of them when she moved out and left the other half behind. Jill did not provide any documentary evidence to support her claim of ownership of these items, nor does the evidence show that she made any specific requests for their return prior to these CRT disputes. On balance, I find it unproven that Patrick committed any wrongful acts with respect to these items, and I dismiss these claims.
37. Finally, Jill also claims that Patrick has converted various kitchenware items, 3 lamps, various bedding and bathroom items, a \$550 blanket from the Bay, a set of white curtains, various gardening tools and accessories, assorted household plants and pots, 2 rugs, 2 mats, a hose stand, and a coat rack. Patrick says that these items either belong to him, have already been taken by Jill, or they do not exist. I find the

evidence before me fails to establish that these items exist, or if they do exist, that Jill owns them instead of Patrick. So, I dismiss Jill's claims about the remaining items.

Is Jill entitled to the \$260.74 storage fee's return?

38. This leaves Jill's claim for the \$260.74 storage fee. As noted above, Jill says that Patrick made her pay this fee while her furniture and other belongings remained at his home following their breakup. Jill says that Patrick "threatened to throw her belongings on the street" if she did not pay the storage fee, so she had no choice but to pay it.

39. Jill essentially argues that she agreed to pay the \$260.74 under duress. Duress involves coercion of consent or free will of a party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position. Rather, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive, or coercive manner.¹² Here, while Jill alleges that Patrick threatened to throw her belongings to the street if she did not pay the storage fee, she has provided no evidence of any such threats. So, I find duress unproven. Absent duress, I find Jill paid the storage fee willingly and is not entitled to its return. I dismiss this part of her counterclaim as a result.

Conclusion

40. I dismiss Patrick's claim for Huxley's return. I find Jill is Huxley's rightful owner and she is entitled to keep the dog. As Patrick undisputedly still has Jill's bike and camping chairs, I order him to return these items to her. Finally, I order Patrick to pay Jill \$600 in damages for the couches and the sunglasses.

41. I note that in his written argument and in the counterclaim Dispute Response, Patrick makes additional allegations against Jill. In particular, he says that Jill has his work-issued iPad, that she owes him rent, that she took many of his belongings when she

¹² *Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442 at paragraph 50, citing *Lei v. Crawford*, 2011 ONSC 349.

moved out, and that she owes him \$300 for a smoker barbeque and \$100 for a Lululemon gift card. Since Patrick did not amend his Dispute Notice to add these claims, I infer he argues he is entitled to a set-off for them. However, I find that Patrick has failed to prove all of these allegations. So, he is not entitled to any set-off.

42. The *Court Order Interest Act* applies to the CRT. Jill is entitled to pre-judgment interest on the \$600 in damages from November 14, 2023, the date of the counterclaim Dispute Notice, to the date of this decision. This equals \$20.28.
43. 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. As Patrick was unsuccessful in his claim, I find he is not entitled to reimbursement of his paid CRT fees. Jill was partially successful in her counterclaim. So, I order Patrick to reimburse her \$62.50 for half her paid CRT fees.
44. Jill also provided receipts for expenses she incurred for the affidavits she submitted in evidence. These receipts total \$239. Though I did not refer to all of the affidavits in this decision, the affidavit evidence was relevant and useful for deciding these disputes. Since Jill was only partly successful as a whole, I find she is entitled to half her dispute-related expenses, which equals \$119.50.

ORDERS

45. Within 30 days of the date of this decision, I order Patrick to pay Jill a total of \$802.28, broken down as follows:
 - a. \$600 in damages,
 - b. \$20.28 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$182, for \$62.50 in CRT fees and \$119.50 for dispute-related expenses.
46. Within 30 days of the date of this decision, I order Patrick to make the black bike and 2 camping chairs available for pick-up by Jill, or someone she has designated in

writing to pick them up on her behalf, at a time and place the parties reasonably agree to on 5 days' written notice.

47. Jill is entitled to post-judgment interest, as applicable.

48. I dismiss the parties' remaining claims.

49. 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 the Provincial Court of British Columbia.

Nav Shukla, Tribunal Member