



Civil Resolution Tribunal

Date Issued: November 29, 2024

File: SC-2022-008674

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fofana v. Plewes*, 2024 BCCRT 1211

BETWEEN:

VEMY BARTHELEMY FOFANA

APPLICANT

AND:

RICK PLEWES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This a roommate dispute.
2. The applicant, Vemy Barthelmey Fofana, rented a room from the respondent, Rick Plewes. Mr. Fofana says he left his belongings at the house and then went out of town to work for 4 days. Mr. Fofana says that upon his return, Mr. Plewes locked him out of the house and kept his belongings. Mr. Fofana says a police officer eventually

retrieved 2 of Mr. Fofana's bags from the house, but Mr. Fofana says he had more belongings that Mr. Plewes did not return. Mr. Fofana claims \$5,000 for his unreturned belongings.

3. Mr. Plewes says Mr. Fofana did not pay all the rent, so he locked him out of the home. He says that on October 12, 2022, a police officer, Constable G, called him and said Mr. Fofana wanted his belongings. Mr. Plewes says he agreed, Constable G came to his home, and he helped Constable G load Mr. Fofana's bags into a police vehicle. Mr. Plewes says that shortly after Constable G left, Constable G called again and said Mr. Fofana did not want the items. Mr. Plewes says Constable G brought the bags back and told Mr. Plewes to throw the items out or donate them. Mr. Plewes says he donated all the items to Value Village the next day. Mr. Plewes says he owes Mr. Fofana nothing.
4. Both parties are self-represented in this dispute.
5. For the reasons set out below, I dismiss Mr. Fofana's claim.

JURISDICTION AND PROCEDURE

6. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
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.
8. In this dispute, each party says the other party's version of events is false. So, I have considered whether to hold an oral hearing. Credibility issues can in some cases be resolved by an oral hearing, but the advantages of an oral hearing must be balanced against the CRT's mandate. This includes considering what questions turn on credibility, the importance of those questions, and the extent to which cross-

examination may assist in answering those questions (see *Downing v. Strata Plan VR2356*, 2023 BCCA 100, at paragraph 47).

9. In this dispute, important questions turn on credibility, particularly what Constable G told each party about Mr. Fofana's belongings, if anything. From the parties' submissions, they both understood the questions that turned on credibility and both addressed each other's credibility in their submissions. Neither party asked for an oral hearing, which would delay the resolution of this dispute. Although the \$5,000 at stake is the CRT's maximum for small claims, it is still a relatively small amount. For these reasons, I find the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions. I have decided this dispute on the written submissions and evidence before me.
10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
11. Mr. Fofana provided late evidence in this dispute. Mr. Plewes had the opportunity to respond to that evidence, so I find there is no procedural unfairness in admitting it. So, I have considered the late evidence in making my decision.
12. Both parties provided evidence and submissions about their rental agreement, and several other matters. For example, they made submissions about whether Mr. Fofana paid the correct amount of rent, and about Mr. Fofana's immigration status. Based on the Dispute Notice, the only issue before me to decide in this dispute is about Mr. Fofana's belongings. So, I make no findings about other matters between the parties.
13. Mr. Plewes requested \$8,250 in damages for lost rental income and other costs. However, Mr. Plewes did not file a counterclaim, so I make no findings or order about Mr. Plewes' alleged damages.

ISSUES

14. Does Mr. Plewes owe Mr. Fofana any compensation for his belongings?

EVIDENCE AND ANALYSIS

15. As applicant in this civil dispute, Mr. Fofana must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.
16. The evidence shows that on September 6, 2022, Mr. Fofana paid Mr. Plewes a partial deposit towards the room rental. On September 17, 2022, he paid the remainder of the deposit. The invoice shows that the monthly rent was \$1,300.
17. The parties agree that Mr. Fofana moved in some belongings, but never stayed in the room as he left town for several days. The parties also agree that when Mr. Fofana returned on September 23, 2022, Mr. Plewes would not let him in because Mr. Plewes said he had not paid the rent.
18. At some point after that, Mr. Fofana emailed or texted Mr. Plewes, asking for his belongings back. According to a portion of an email Mr. Fofana provided in evidence, Mr. Plewes replied that Mr. Fofana could send a taxi or Uber to pick up his items, and Mr. Plewes would load them.
19. Mr. Fofana did not send a taxi or Uber. Instead, he asked the police to retrieve his items. The parties agree that Constable G came to the house on October 12, 2022 to collect Mr. Fofana's belongings.
20. In the Dispute Notice, Mr. Plewes said he helped Constable G load 5 bags into the police vehicle – 2 suitcases, 2 overnight cases, and a large bag. In his later submission, Mr. Plewes said he and Constable G loaded 6 bags – 2 suitcases, 2 overnight bags, and 2 large grocery bags. For the reasons explained below, I find nothing turns on whether there were 5 or 6 bags.

21. In his CRT submission, Mr. Fofana says he waited for Constable G at a skytrain station while Constable G went to get the bags. Mr. Fofana said the following occurred:

- After he waited 2 hours, Constable G called him and said Mr. Plewes had 2 bags for Mr. Fofana.
- Mr. Fofana told Constable G that there were not just 2 bags, and that he had clothing, computers, books, files, and other items.
- Constable G told Mr. Fofana to pick up the 2 bags, and if he did not, Constable G would tell Mr. Plewes to throw them away.
- Mr. Fofana asked Constable G why he needed to pick up the 2 bags. He told Constable G he needed a lawyer, and they ended the call.
- Mr. Fofana does not know what happened to the 2 bags.

22. I find Mr. Fofana's submission supports Mr. Plewes' version of events. That is, it supports Mr. Plewes's account that he helped Constable G load Mr. Fofana's bags into the police vehicle, then Mr. Fofana refused to take them from Constable G, so Constable G returned the bags to Mr. Plewes and told him to donate them or throw them out.

23. Mr. Plewes says he donated Mr. Fofana's items to Value Village. I find Mr. Fofana, who bears the burden of proof in this dispute, has not proved otherwise. Mr. Fofana alleges Mr. Plewes kept all or some of his items, but I find there is no evidence of this. Rather, I find Mr. Fofana's own account of events shows that Mr. Fofana refused to collect any of his belongings from Constable G after Constable G retrieved them.

24. Based on this, I accept that Constable G returned the items to Mr. Plewes and told him to donate them or throw them out.

25. I find it was reasonable for Mr. Plewes to donate Mr. Fofana's items, as he had warned Mr. Fofana he intended to do this if Mr. Fofana did not pick them up or have

them collected. Also, according to Mr. Fofana's own submission, Constable G told Mr. Fofana he would instruct Mr. Plewes to throw the bags out.

26. I find that because Mr. Fofana did not see the bags after Constable G collected them, he cannot know if any of his items were missing, as he alleges.
27. For these reasons, I find Mr. Plewes does not owe Mr. Fofana for his belongings.
28. I also note that I would not have ordered the claimed \$5,000 in damages in any event, as Mr. Fofana provided no evidence about what the alleged missing items were, or their value. For example, he provided no photos of his items and no receipts.
29. In conclusion, I dismiss Mr. Fofana's claims.
30. 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 Mr. Fofana was unsuccessful, I dismiss his claim for reimbursement of CRT fees.
31. Mr. Plewes is the successful party. He claims \$135 for legal advice from a notary public, and \$315 for time spent filling and completing documents for this CRT dispute.
32. CRT rule 9.5 says the CRT will not order a party to pay another party's legal fees in a small claims dispute unless there are extraordinary circumstances. Also, CRT rule 9.5(5) says the CRT will not order reimbursement for a party's time spent dealing with a dispute except in extraordinary circumstances. I find no extraordinary circumstances here. So, I dismiss Mr. Plewes' claim for legal fees and time spent preparing dispute-related documents.

ORDER

33. I dismiss Mr. Fofana's claim. I dismiss Mr. Plewes' claim for dispute-related expenses.

Kate Campbell, Vice Chair