



Civil Resolution Tribunal

Date Issued: March 28, 2025

File: SC-2023-007700

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Murray v. Tresoor*, 2025 BCCRT 402

B E T W E E N :

DEVON MURRAY

APPLICANT

A N D :

MITCHELL TRESOOR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This is a dispute about an alleged assault and battery between two roommates.
2. The applicant, Devon Murray, says the respondent, Mitchell Tresoor, assaulted him during an argument. As a result of the assault, Mr. Murray says he moved out of the

rental unit. Mr. Murray seeks \$5,000 for costs related to the assault, moving out early and punitive damages.

3. Mr. Tresoor denies assaulting Mr. Murray and says Mr. Murray moved out voluntarily before the end of the rental term so is not entitled to any reimbursement.
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 *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 says 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.
6. 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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 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

9. The issues in this dispute are:
 - a. Did Mr. Tresoor commit assault or battery, and if so, what is the appropriate remedy?
 - b. Is Mr. Murray entitled to repayment for moving fees, one month's rent or loss of income?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Murray must prove his claims on a balance of probabilities (which means more likely than not). 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.

Did Mr. Tresoor commit assault or battery, and if so, what is the appropriate remedy?

11. Mr. Murray says the assault occurred at approximately 1 am on June 24, 2023. Mr. Murray says he and Mr. Tresoor started arguing over Mr. Tresoor's bikes that were stored in the shared kitchen. Mr. Murray says that he attempted to move one of Mr. Tresoor's bikes out of the kitchen. Mr. Murray says Mr. Tresoor shoved him from the middle of the kitchen to the window and told Mr. Murray not to touch his belongings. Mr. Murray says he tried to move the bike again and Mr. Tresoor shoved Mr. Murray to the window again. Mr. Murray says Mr. Tresoor then began punching Mr. Murray with elbow strikes on the back of his head. Mr. Tresoor allegedly then kicked Mr. Murray, knocking him to a sitting position on the ground.

12. Mr. Murray says he tried to get to his feet, but Mr. Tresoor allegedly grabbed the hood of his jacket and rammed Mr. Murray's face into the corner of a square table. Mr. Murray says this led to a cut above his eye. Mr. Murray says he then ran Mr. Tresoor into a wall next to a flight of stairs. Mr. Murray reached into his pocket to get his phone and start recording the altercation. As he started to record, Mr. Murray says Mr. Tresoor started to put Mr. Murray in a headlock. Mr. Murray says Mr. Tresoor released him from the headlock when Mr. Tresoor realized Mr. Murray had started recording the incident on his phone.
13. Mr. Murray provided the video footage. I find the video footage shows that Mr. Murray had blood around his left eye. Mr. Murray says this blood was from a cut on his left cheek under his eye. There was also blood on the kitchen floor. The video footage shows the parties continuing to discuss the incident. In the video, Mr. Tresoor accuses Mr. Murray of attacking him first.
14. In his submissions, Mr. Tresoor denies assaulting Mr. Murray and denies Mr. Murray's entire version of events. Mr. Tresoor admits the parties were shoving one another during the argument. However, Mr. Tresoor says Mr. Murray tripped and fell, hitting his head on a cabinet.
15. Both parties refer in their submissions to a police report, but it is not clear if either party had a copy of the police report. Neither party submitted the police report in evidence.
16. Mr. Murray uses the word assault in his submissions as the word is commonly used. However, assault and battery are distinct torts (legal wrongs). Assault is about threats of imminent harm, while battery is about physical contact.
17. Battery is a direct, intentional and physical interference with another person that is non-trivial in the sense that it is either harmful or offensive to a reasonable person (see *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24). There is no requirement to prove damage or injury (see *Norberg v. Wynrib*, 1992 CanLII 65 (SCC)).

18. Here, I find Mr. Tresoor admits to shoving Mr. Murray. Although Mr. Tresoor says Mr. Murray tripped and fell, I find that it is more likely that Mr. Murray fell because Mr. Tresoor had shoved him. Mr. Tresoor also says that Mr. Murray fell because he was intoxicated. There is no evidence to support Mr. Tresoor's claim that Mr. Murray was intoxicated. So, I do not rely on this submission.
19. Although Mr. Murray provides more details of the alleged battery, such as being punched, kicked, and run into the corner of a table, Mr. Tresoor denies any of these actions. Mr. Tresoor also says in his Dispute Response that he is 5 foot 10 inches tall and weighs 180 pounds while Mr. Murray is 6 foot 6 inches tall and weighs 265 pounds. Mr. Tresoor relies on this height and weight discrepancy to say that Mr. Murray's version of events is not realistic. Mr. Murray does not dispute these weight and height differences. Instead, Mr. Murray describes prior episodes of Mr. Tresoor's allegedly aggressive behaviour. I find that prior incidents do not assist me in determining the extent of the alleged assault or battery in this instance. So, I do not rely on these other episodes.
20. Mr. Murray did not provide supporting evidence such as a medical report or other photographs of bruising or other injuries suffered. So, I find the supporting evidence is insufficient to prefer Mr. Murray's version of events over Mr. Tresoor's regarding the other aspects of the alleged assault beyond the shoving.
21. In cases where assault or battery are proved but there is no lasting harm, the Court has previously found that nominal damages are appropriate (see *Grenier v. Williams*, 2020 BCSC 462 at paragraph 97). In this dispute there is no evidence that the shoving caused lasting physical harm. Although the video evidence shows significant bleeding around Mr. Murray's right eye, there is no medical evidence to explain the mechanism of this injury. There is also no evidence that this injury caused lasting physical harm.
22. Since Mr. Tresoor admits to shoving Mr. Murray, I find that Mr. Tresoor is liable for battery. In the absence of medical records supporting lasting physical harm, I award Mr. Murray \$500 in damages for pain and suffering.

23. Mr. Murray also asked for punitive damages. Punitive damages are meant to punish a “morally culpable” respondent and are usually only granted for malicious and outrageous acts (see: *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paragraphs 62 and 68). Punitive damages should be resorted to only in exceptional cases and with restraint (see: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at paragraph 69). Since I have found that the available evidence does not support Mr. Murray’s version of events over Mr. Tresoor’s, I find that punitive damages are not warranted in this dispute.

Is Mr. Murray entitled to repayment for moving fees, one month’s rent or loss of income?

24. Mr. Murray claims \$200 for moving fees, \$280 for a day off work to move and \$510 for an extra month’s rent paid to the landlord. Despite these claims, Mr. Murray did not provide any supporting evidence for the \$200 in moving expenses, such as receipts. Nor did Mr. Murray explain how he calculated the \$280 for loss of income. So, I dismiss these claims.

25. Mr. Murray said that both he and Mr. Tresoor signed the lease agreement with the landlord. Mr. Murray said the rent was \$375 plus utilities per month. It is not clear if this is the total rent per month or just Mr. Murray’s portion of the total rent. Mr. Murray did not explain why he had to pay the landlord \$510 in extra rent. I infer that the extra amount was for utilities, but Mr. Murray has not provided details of those utilities.

26. Mr. Murray said that after this incident he did not want to live in the same residence as Mr. Tresoor. I accept this. Mr. Murray said that he conducted a move out inspection with the landlord on June 26, 2023. Since the incident occurred on June 24, 2023, I infer that Mr. Tresoor was not able to give sufficient notice to his landlord to terminate his part of the lease. I find that the \$375 in rent for July 2023 is a pecuniary (monetary) damage claim for out-of-pocket expenses. So, I award Mr. Murray \$375 for the July rent payment.

27. The *Court Order Interest Act* applies to the CRT. Section 2 of the *Court Order Interest Act* says pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs. Mr. Murray is entitled to pre-judgment interest on the \$375 from July 1, 2023, the date of the payment to the date of this decision. This equals \$31.52.
28. Under CRTA section 49 and 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. Murray was partially successful, I find he is entitled to reimbursement of \$87.50 for half of his CRT fees. Neither party claimed dispute-related expenses.

ORDERS

29. Within 30 days of the date of this decision, I order Mitchell Tresoor to pay Devon Murray a total of \$994.02, broken down as follows:
- a. \$500 in non-pecuniary damages,
 - b. \$375 in pecuniary damages,
 - c. \$31.52 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$87.50 in CRT fees.
30. Mr. Murray is entitled to post-judgment interest, as applicable.
31. Mr. Murray's other claims are dismissed.

32. 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.

Mark Henderson, Tribunal Member