Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *McDowell v. Enslin*, 2025 BCCRT 1320

B E T W E E N :

JAYUN MCDOWELL

APPLICANT

A N D :

KAREN ENSLIN and ROBERTO VILLAMEDIANA

RESPONDENTS

A N D :

JAYUN MCDOWELL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Peter Nyhuus

INTRODUCTION

1. The applicant, Jayun McDowell, says she lent her kayak to the respondents, Karen Enslin and Roberto Villamediana, and that they refuse to return it. Ms. McDowell seeks $3,830 in compensation, broken down as $2,570 for the kayak's replacement, a $250 delivery fee, $1,000 for loss of use, and $10 for her expenses.

2. The respondents say Ms. McDowell gave them the kayak as a gift. They say they are not legally obligated to return the kayak, although they are willing to.

3. The respondents also say they restored and maintained the kayak at their expense over the past 5 years. In their counterclaim, the respondents seek $1,000 if I order them to return the kayak to Ms. McDowell. They say this is the kayak's fair market value.

4. Each party is self-represented.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought 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. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended. These are the CRT's formal written reasons.

6. This decision involves 2 linked disputes, a claim and counterclaim that are about the same kayak. Since the disputes involve the same parties and related issues, I have written one decision for both disputes.

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. The parties question the credibility, or truthfulness, of the other's evidence. Under

the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. Neither party requested an oral hearing. So, bearing in mind the CRT's mandate for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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. Under CRTA section 48(1), the CRT may make an order on terms and conditions it considers appropriate.

Settlement discussions

10. The respondents say Ms. McDowell included in evidence emails containing a settlement offer, contrary to CRT rule 1.11. I have disregarded that information as permitted by rule 1.4.

Defamation

11. Each party says the other has attacked their character or defamed them, although neither party seeks a remedy for this alleged conduct. CRTA section 119 says the CRT does not have jurisdiction to resolve claims about slander or libel, which are forms of defamation. I do not consider or resolve these allegations, as I find they are defamation claims.

ISSUES

12. The issues in this dispute are:

    a. Did the respondents wrongfully keep the kayak?

    b. If yes, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. As the applicant in a civil proceeding, Ms. McDowell must prove her claims on a balance of probabilities, meaning more likely than not. The respondents must prove their counterclaims to the same standard. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.

Background

14. The parties all live in a rural area by the coast. Ms. McDowell's house is across the street from the respondents' waterfront property. In 2016, Ms. McDowell bought a new Delta kayak. She says she typically kept the kayak at a nearby public beach and allowed various neighbours to use it.

15. In the summer of 2019, Ms. McDowell decided to relocate part-time to Vancouver for work. Before leaving, she and Ms. Enslin spoke about her kayak, although they disagree about where this conversation took place and what the other said. Ms. McDowell says that Ms. Enslin came to her house and offered to keep the kayak at her property while she was working in Vancouver. She says she accepted this offer since her other option was to keep the kayak at her neighbour's house 1 km away. Ms. Enslin, on the other hand, says Ms. McDowell approached her on the beach and told her she had no use for the kayak anymore as she was moving to Ontario. She says Ms. McDowell offered the kayak to her as a gift and that she could pick it up from her yard whenever.

16. Shortly after Ms. McDowell moved away, the respondents picked up the kayak from Ms. McDowell's backyard and began storing it on their property.

17. The parties did not see each other again for about 3 years, although they exchanged a disputed number of emails. Ms. McDowell provided 2 emails addressed to the respondents, one dated June 19, 2020, the other dated March 9, 2021. In each of these emails, she says she must stay in Vancouver because of the

pandemic and she expresses gratitude for allowing her to keep the kayak at their property.

18. The respondents say they never received these emails and that Ms. McDowell likely fabricated them. They provided an email from Ms. McDowell dated May 15, 2020, in which Ms. McDowell says she misses them, but does not mention the kayak. They say this is the only email they received from Ms. McDowell.

19. Ms. McDowell does not admit to fabricating any emails. However, she does not strongly refute the allegation either. I find that I can decide this dispute without these emails, so I make no determination on the emails' authenticity and I do not rely on them.

20. On July 8, 2022, Ms. McDowell greeted the respondents at the community mailbox near their homes and asked for her kayak back. The respondents told Ms. McDowell that they were under the impression she had given them the kayak as a gift. The respondents told Ms. McDowell that if she had changed her mind about the kayak being a gift, then it would take some time for them to get the kayak back, as they had given it to their daughter who lived elsewhere.

21. The parties spoke again at Ms. McDowell's home on July 10. The parties disagree about most of the content of this conversation. However, they both acknowledge that Ms. McDowell asked for money if the respondent could not return the kayak. I infer this conversation ended without an agreement on what the parties would do next.

22. On August 18, 2022, Ms. McDowell confronted the respondents at the beach near their homes. The interaction was unpleasant, although the parties disagree about what Ms. McDowell said. On August 24, Mr. Villamediana delivered a letter to Ms. McDowell, in which he and Ms. Enslin wrote their version of the events. The letter says they are willing to come to a fair settlement, but only after Ms. McDowell provides a written retraction of her "public accusation" that they stole the kayak.

23. Ms. McDowell did not respond to this letter. She says she "decided to give it some time." The parties agree they did not have any further contact until Ms. McDowell filed her CRT claim in March 2024.

Did the respondents wrongfully keep the kayak?

24. I find Ms. McDowell's claim is based on the tort (legal wrong) of detinue. Detinue is the continued wrongful detention of personal property after it has been requested.

25. In *Clex Solutions Ltd. v. Gust*, 2025 BCSC 1092, the court outlined the elements of detinue. For Ms. McDowell to establish detinue, she must prove:

    a. The kayak is specific personal property.

    b. Ms. McDowell has a greater possessory interest in the kayak than the respondents.

    c. Ms. McDowell made a proper demand for the kayak.

    d. The respondents failed to return the property, without lawful excuse.

26. I find the respondents are not liable in detinue if Ms. McDowell either gifted or abandoned the kayak, as this would mean they have a greater possessory interest in the kayak than Ms. McDowell. So, I will consider whether Ms. McDowell gifted or abandoned the kayak.

27. As the party alleging the gift, the respondents have the burden of proving that Ms. McDowell intended to gift the kayak to them in a way that was inconsistent with any other intention or purpose (see *Pecore v. Pecore*, 2007 SCC 17 and *Lundy v. Lundy*, 2010 BCSC 1004). Once a person gives a gift, it cannot be revoked.

28. I find the respondents have not proven that Ms. McDowell intended to gift them the kayak. I find it likely that Ms. McDowell intended to let the respondents store and use the kayak while she was temporarily living in Vancouver, but that she did not intend for this arrangement to be permanent. The respondents have not provided any documentary evidence to support their assertion that Ms. McDowell gifted the

kayak to them. While I accept that they may have misunderstood Ms. McDowell's intention when providing the kayak, the legal test for the existence of a gift is about the giver's intention, not the receiver's understanding of their intention.

29. This leaves abandonment. The party seeking to rely upon the abandonment principle bears the burden of proof. 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. See *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30.

30. I acknowledge that Ms. McDowell left the kayak at the respondents' property for a long time, nearly 3 years, before inquiring about it. However, I acknowledge that this was during the pandemic and that Ms. McDowell was living in Vancouver. I find it reasonable that Ms. McDowell would have left the kayak with the respondents during this period. Given that she had recently paid about $2,500 for the kayak, I find it unlikely that she would simply abandon it. So, I find the respondents have not proven that Ms. McDowell abandoned her kayak.

31. Since the respondents have not proven that Ms. McDowell gifted the kayak to them or abandoned it, I find Ms. McDowell has proven detinue. This means the respondents wrongfully kept the kayak after she demanded its return.

What is the appropriate remedy?

32. In *P.S. Sidhu Trucking Ltd. v Elima Enterprises Ltd.*, 2020 BCSC 1062, the court considered the remedy for detinue and wrote that it could either order the property's return or damages. The court noted that damages are appropriate where the property consists of "ordinary items of commerce".

33. Ms. McDowell seeks compensation rather than the kayak's return. She expresses concern about the kayak's condition. She says she does not know if the respondents took proper care of the kayak. The respondents dispute this. They say the kayak is in a better condition than it was when they picked it up. They say they

have kept it safely stored indoors and have not used it since she demanded its return in 2022.

34. I considered whether to simply order the kayak's return, given that the parties are so close to each other. But, for 3 reasons, I find that a monetary award is preferable. First, I find that this kayak is an ordinary commercial item that is easily replaceable. Second, Ms. McDowell framed her claim as a claim for monetary damages rather than the kayak's return, so a monetary award is procedurally fairer. Third, I am concerned that an order for the kayak's return would result in further conflict between the parties about the kayak's condition or the coordination of the delivery.

35. So, what is an appropriate monetary award? As I mentioned above, Ms. McDowell claims $3,830, broken down as $2,570 for the kayak's replacement, a $250 delivery fee, $1,000 for loss of use, and $10 for her expenses.

36. I dismiss her $1,000 claim for financial damages for loss of use. I find the respondents essentially did Ms. McDowell a favour by storing her kayak for her for 3 years. Then, after demanding the kayak's return, the respondents told Ms. McDowell they were willing to come to a fair settlement. Ms. McDowell took no further steps to resolve the issue for nearly 2 years, until she filed this claim. I find the respondents are not responsible for her inability to use the kayak during this period.

37. I dismiss the $250 delivery fee, as I find it unclear what the fee is for. I will deal with her $10 claim for her expenses further below.

38. This leaves the kayak's replacement value. In support of her claim to $2,570, she provided a receipt from 2016 showing she purchased a new kayak from a store in Ucluelet for this amount. However, I find a damages award should not be an amount equivalent to a new kayak, as this would put her in a better position than she would have been in if the wrong had not occurred. Ms. McDowell admits she used the kayak frequently from 2016 to 2019 and that she often stored the kayak on the beach. I find it likely the kayak was not in a new condition.

39. Instead, I find she is entitled to the kayak's current fair market value, as this would allow her to purchase a similar kayak. She did not provide any evidence to show the kayak's fair market value, however, the respondents did. The respondents provided screenshots of 3 similar-looking Delta kayaks for sale on Facebook Marketplace with asking prices of $1,100, $950, and $900. The respondents say the kayak's fair market value is $1,000. I agree and I find this is a reasonable damages award.

40. I find that the respondents must pay Ms. McDowell $1,000 in damages for the kayak's value. For clarity, I am not ordering the respondents to return the kayak.

Counterclaim

41. In the respondents' counterclaim, they ask me to grant them $1,000 in compensation if I order them to return the kayak. They say this compensation is related to the time and money they spent restoring the kayak and preparing for this hearing. They have not provided any evidence to support the time or materials they put into the kayak. Except in extraordinary circumstances, the CRT does not order one party to pay another party compensation for time spent dealing with the tribunal proceeding.

42. I dismiss this counterclaim. I have not ordered Ms. McDowell to return the kayak, so the respondents' claim is essentially moot, or no longer legally relevant. Further, if the respondents improved the kayak as they say they did, then they are now the beneficiaries of these improvements as they still have the kayak.

Fees and Interest

43. The *Court Order Interest Act* applies to the CRT. However, Ms. McDowell waived her right to interest, so I order none.

44. 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. While Ms. McDowell was partially successful, I decline to order the respondents to reimburse her fees and expenses. Part of the CRT's

mandate is to encourage the resolution of disputes by agreement between the parties. The respondents have repeatedly offered to return the kayak, including in the Dispute Response. I find Ms. McDowell was no more successful than the respondents' settlement offers. So, I find it would be contrary to the CRT's mandate to award the reimbursement of her fees and expenses. I find the parties should bear their own costs.

ORDERS

45. Within 21 days of the date of this decision, I order the respondents to pay Ms. McDowell $1,000 in damages.

46. Ms. McDowell is entitled to post-judgment interest, as applicable.

47. I dismiss the parties' remaining claims.

48. 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.

Peter Nyhuus, Tribunal Member