



Civil Resolution Tribunal

Date Issued: February 21, 2024

Files: SC-2022-008842
and SC-CC-2023-005588

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kurik v. Belford*, 2024 BCCRT 166

B E T W E E N :

DUANE KURIK

APPLICANT

A N D :

HANNAH CHLOE THORNE BELFORD

RESPONDENT

A N D :

DUANE KURIK

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This decision is about 2 linked disputes that I find are a claim and counterclaim. So, I have considered the evidence and submissions in both disputes and issued 1 decision.
2. In dispute number SC-2022-008842 Duane Kurik claims \$2,180 from Hannah Chloe Thorne Belford for allegedly damaging his personal property.
3. Ms. Belford denies causing any damage. In dispute number SC-CC-2023-005588, she claims Mr. Kurik made her leave his home without her cellphone, forcing her to purchase a new phone for \$690. She claims this amount from Mr. Kurik. Ms. Belford also claims \$2,000 in damages for Mr. Kurik allegedly harassing her, her mother, and her former partner.
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.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.
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 a court of law.

8. Where permitted by CRTA section 118, in resolving these 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.

Preliminary Issue – Harassment Claim

9. As noted above, Ms. Belford alleges Mr. Kurik harassed her, her mother, and her former partner. Ms. Belford's mother and former partner are not named parties in these disputes. I find Ms. Belford has no standing (legal right) to make any claims on their behalf. Further, and in any event, there is no recognized tort of harassment in British Columbia (see *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61). This means a person cannot sue another for harassment in this province. So, I dismiss Ms. Belford's harassment claim against Mr. Kurik. I address the parties' remaining claims below.

ISSUES

10. The remaining issues in these disputes are:
 - a. Did Ms. Belford damage Mr. Kurik's personal property?
 - b. If so, what remedies, if any, are appropriate?
 - c. Must Mr. Kurik reimburse Ms. Belford \$690 for her new phone?

EVIDENCE AND ANALYSIS

11. In this civil proceeding, Mr. Kurik must prove his claims on a balance of probabilities (meaning more likely than not). Ms. Belford must prove her counterclaim to the same standard. I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note Mr. Kurik did not provide any reply submissions in dispute SC-2022-008842 and Ms. Belford did not provide any documentary evidence in the same dispute, despite both having

the opportunity to do so. However, as noted above, I have considered the evidence and arguments provided by the parties as a whole in deciding both disputes.

12. On September 14, 2022, Ms. Belford arrived at Mr. Kurik's home. Mr. Kurik allowed her to stay overnight as Ms. Belford had no alternative accommodations for the night. Mr. Kurik says that during her visit, Ms. Belford became inebriated and defecated throughout his home, damaging his carpet, recliner, bed, pillows, comforter, sheets, and mattress protector. Mr. Kurik says that he drove Ms. Belford to a hotel, but that she also stained his truck's seat that she sat on.
13. Ms. Belford denies that she was inebriated and damaged Mr. Kurik's personal property as alleged. She says that the evening she arrived at Mr. Kurik's home, she had just finished working at a lodge and likely had dirt, sawdust, or mud on her.
14. Mr. Kurik relies on a written statement from his son, DK. In this November 7, 2023 statement, DK says that they live with Mr. Kurik and that they were there on September 14 when Ms. Belford arrived unannounced. DK says that when they woke up at around 3 am on September 15 to use the bathroom, they noticed urine and feces all over the floor. DK says that they then immediately went into Mr. Kurik's room to find Mr. Kurik and Ms. Belford both asleep. DK says they woke up Mr. Kurik, who then told Ms. Belford to "go clean up her mess." DK says the next morning, they left with Mr. Kurik for a class and when they returned, Ms. Belford was still asleep and had not cleaned up the mess. So, Mr. Kurik told Ms. Belford she had to leave and dropped her off at a hotel.
15. Ms. Belford says that she did not see DK while she was at Mr. Kurik's house and suggests that DK's statement is not true. However, just because Ms. Belford may not have noticed DK at Mr. Kurik's home does not mean that DK was not there. Notably, Ms. Belford does not say that the items that Mr. Kurik says she damaged were dirty or damaged when she arrived at Mr. Kurik's home. On balance, I find DK's statement is consistent with Mr. Kurik's evidence and the documentary evidence. While I acknowledge DK is Mr. Kurik's son, meaning he is not a fully neutral witness, I find there is nothing in DK's statement or the remainder of the evidence before me to

suggest DK's evidence is not reliable. So, I accept DK's evidence and find DK likely did see Ms. Belford and witnessed the events as described.

16. Based on DK's witness statement and photographs in evidence, I find it more likely than not that Ms. Belford damaged Mr. Kurik's truck's seat, recliner, pillows, comforter, sheets, and mattress protector. Mr. Kurik says that his mattress was also damaged because Ms. Belford somehow managed to pull the mattress protector off, which I accept. However, from a photograph in evidence, I find no obvious stains or damage that Ms. Belford likely could have caused to the box spring that was underneath the mattress. So, I find it unproven that Ms. Belford damaged Mr. Kurik's box spring. Similarly, while Mr. Kurik says Ms. Belford also damaged the carpet in his bedroom, DK's statement does not mention any damage to the carpet and no damage is evident from the photographs in evidence. So, I find this allegation unproven as well.

Must Ms. Belford reimburse Mr. Kurik for the damaged items?

17. Although he did not specifically say so, I find Mr. Kurik's claims against Ms. Belford are in negligence. To prove negligence, Mr. Kurik must show that Ms. Belford owed him a duty of care, she breached the standard of care, and the breach caused or contributed to reasonably foreseeable damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).
18. I find Ms. Belford owed Mr. Kurik a duty of care to take reasonable measures to avoid damaging his property. I find Ms. Belford breached the standard of care by dirtying and staining Mr. Kurik's belongings. I find the breach caused reasonably foreseeable damage, entitling Mr. Kurik to a remedy.
19. In negligence claims, damages are awarded to the innocent party to put them in the original position they would have been in if the negligence had not occurred. So, damages for wrongful damage to personal property will generally equal the cost of repairing or replacing the damaged property.

20. As noted, Mr. Kurik claims \$2,180 in damages. Based on receipts in evidence, I infer Mr. Kurik claims he spent the following:
- a. \$51.29 at Walmart on September 15 for pillowcases, a comforter and 2 pillows,
 - b. \$1,018.05 at the Brick on September 16 for a mattress, box spring, and mattress pad,
 - c. \$187.35 at Canadian Tire on September 16 for a Bissell Little Green carpet and upholstery cleaner and a Bissell spot cleaner,
 - d. \$94.41 at Safeway on September 17 to rent a carpet cleaner (including a \$25 deposit), upholstery cleaning tool, and for cleaning supplies, presumably for the carpet cleaner,
 - e. \$148.93 at Walmart on September 17 for 2 foam pillows and a sheet set, and
 - f. \$20 for 2 trips to the dump on September 17, I infer to dispose of the damaged items.
21. Mr. Kurik further says he has not yet replaced his stained recliner. From documents in evidence, I infer Mr. Kurik says he paid \$669.94 for the recliner, but that it will likely cost him around \$640 to replace it.
22. While Mr. Kurik provided various documents in evidence in support of his claimed damages, he provided little explanation about the expenses in his written argument. For example, it is not clear why Mr. Kurik needed to rent a carpet and upholstery cleaner from Safeway after he purchased one from Canadian Tire the day before. While I have found it unproven that Ms. Belford damaged Mr. Kurik's carpet, I find it likely that Mr. Kurik would have purchased the Bissell Little Green from Canadian Tire to attempt to clean his truck's seat, recliner, and bed. However, given the lack of any explanation, I find Mr. Kurik is entitled to only the \$187.35 he spent at Canadian Tire on September 16 and not the \$94.41 he spent at Safeway the following day.
23. Next, I am satisfied that Mr. Kurik would not have incurred the \$20 dump fees if Ms. Belford had not damaged his bed and recliner. So, I allow these fees as well.

24. Above I have found that Ms. Belford likely did not damage Mr. Kurik's box spring, so I find he is not entitled to the \$162.40 (tax inclusive) he paid for a new box spring.
25. I infer from the evidence that Mr. Kurik was unable to adequately clean his mattress protector, mattress, sheets, pillows, pillowcases, and comforter. Based on a picture in evidence, I find it likely that Mr. Kurik's recliner was also permanently stained. So, I find it reasonable for Mr. Kurik to purchase replacements for these items.
26. While I accept that Mr. Kurik purchased new pillows, pillowcases, mattress, mattress pad, comforter, and new sheets, I find awarding Mr. Kurik the full value of the newly purchased items would likely put him in a slightly better position than he would have been in if Ms. Belford did not damage his property. I find the legal principle of betterment applies here.
27. 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 (see *Laichkwiltach Enterprises Ltd. v. F/V Pacific Faith (Ship)*, 2009 BCCA 157 at paragraphs 38 to 40). Based on the photographs in evidence, I find the items Ms. Belford damaged were likely at least a couple of years old as they do not look like they are new or like new. However, from the photos in evidence, I find that none of the items appear to have been at the end of their useful life. In these circumstances, I find an appropriate deduction for betterment is 25% of the damaged items' replacement cost, recognizing that discounting to avoid betterment is by its nature imprecise (see *Fudge v. Owners, Strata Plan NW 2636*, 2012, BCPC 409 at paragraph 92). The evidence shows that Mr. Kurik paid \$1,055.87 in total to replace the damaged pillows, pillowcases, mattress, mattress pad, comforter, and sheets. With a 25% deduction for betterment, I find Mr. Kurik is entitled to \$791.90 in damages for these items.

28. Similarly, I find Mr. Kurik is entitled to only \$480 for the damaged recliner, with a 25% reduction for betterment from the \$640 price to replace the recliner. Mr. Kurik did not claim any additional amounts for his stained truck seat, so I award nothing further.

Must Mr. Kurik reimburse Ms. Belford for her new phone?

29. It is undisputed that when Ms. Belford left Mr. Kurik's home on September 15, she left her cell phone behind. Mr. Kurik says that Ms. Belford had lost the phone somewhere in his room and he later found it and tried to return it to her. The evidence shows Mr. Kurik returned the phone to Ms. Belford by registered mail on September 24. Ms. Belford says that she tried to find her phone before being rushed out of Mr. Kurik's house on September 15, but was unable to do so because Mr. Kurik's home was messy. As a result, she says she entered a 24-month contract with Telus for a new phone for \$688.80 a few days after she left Mr. Kurik's home, and before Mr. Kurik returned her phone to her.
30. Ms. Belford suggests Mr. Kurik purposely delayed returning her phone to her. However, I find this unproven on the evidence before me. I find the evidence shows that Mr. Kurik made reasonable efforts to return Ms. Belford's phone to her. I further find Mr. Kurik ultimately returned the phone within a reasonable period after Ms. Belford's former partner asked Mr. Kurik to do so and provided a mailing address where Mr. Kurik could send the phone. Under the circumstances, I find no legal basis on which to order Mr. Kurik to reimburse Ms. Belford for purchasing a new phone. So, I dismiss Ms. Belford's counterclaim in dispute SC-CC-2023-005588.

Interest, CRT fees, and dispute-related expenses

31. In conclusion, I find Mr. Kurik is entitled to \$1,479.25 in damages from Ms. Belford. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Kurik is entitled to \$59.37 in pre-judgment interest, calculated as follows from the date of each expense to the date of this decision:
- a. \$2.29 in pre-judgment interest for the \$38.47 awarded for the September 15, 2022, Walmart purchase for pillowcases, pillows, and a comforter,

- b. \$49.26 in pre-judgment interest for the \$641.73 awarded for the mattress and mattress protector and the \$187.35 for the September 16, 2022, Canadian Tire purchases, and
 - c. \$7.82 in pre-judgment interest for the \$111.70 awarded for the September 17 Walmart purchase for 2 foam pillows and a sheet set and the \$20 for dump fees.
32. As Mr. Kurik has not purchased a replacement recliner, I find he has not yet suffered any pecuniary (monetary) loss from the damaged recliner. So, under COIA section 2(a), I decline to order any pre-judgment interest for the \$480 award for the damaged recliner.
33. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Since Mr. Kurik was generally successful, I find he is entitled to \$125 for his paid CRT fees. Ms. Belford was unsuccessful with her counterclaim. So, I dismiss her claim for reimbursement of her paid CRT fees. Neither party claims any dispute-related expenses, so I award none.

ORDERS

34. Within 30 days of the date of this decision, I order Ms. Belford to pay Mr. Kurik a total of \$1,663.62, broken down as follows:
- a. \$1,479.25 in damages,
 - b. \$59.37 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
35. Mr. Kurik is entitled to post-judgment interest, as applicable.
36. I dismiss Ms. Belford's counterclaims in dispute SC-CC-2023-005588.

37. 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