



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Parry v. Bracaglia*, 2018 BCCRT 210

B E T W E E N :

Sharon Parry

APPLICANT

A N D :

Michael Bracaglia

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Adam Shee

INTRODUCTION

1. The applicant, Sharon Parry, claims \$2,000.00 from the respondent, Michael Bracaglia, which she says is owed to her on account of a number of outstanding debts. The parties are each self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the Civil Resolution Tribunal Act (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. There are two main issues in this dispute. The first is whether the respondent owes the applicant for the following items:

- a. Reimbursements from the respondent's health insurer for expenses that the applicant says she had paid for;
 - b. the applicant's share of the cost of a Tens machine that the parties purchased when they lived together and which the respondent has kept since the parties separated;
 - c. various small loans that the applicant says she made to the respondent;
 - d. expenses that the applicant says the respondent did not pay her for after the parties separated;
 - e. a credit that the applicant says the respondent received from Rogers when he cancelled her cell phone after the parties separated; and
 - f. the cost of a replacement shower head that the applicant says belonged to her and which the respondent kept after the parties separated.
7. The second issue is whether the respondent is responsible for any of the rent that the applicant paid for an apartment that the parties had intended to move into together.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities. In other words, I must be more satisfied than not that the applicant is entitled to the monies that she is claiming in order to award those amounts to her.
9. Both the applicant and respondent submitted a fair bit of evidence. Much of the evidence submitted was not particularly relevant to the issues which I must decide and, in my decision, I refer only to the evidence that I found to be relevant.

10. It is common ground that the applicant and the respondent lived together for approximately 14 months and separated in approximately November, 2016 for reasons that are not relevant to the issues I must decide.

Reimbursement for health care expenses

11. The applicant says that shortly before the parties separated, in the fall of 2016 they submitted a number of receipts to the respondent's insurer for health expenses that she had paid. The applicant says that the respondent was reimbursed for those expenses by his insurer but that he did not pay any of the \$137.85 reimbursement to her.
12. In support of her claim for reimbursement, the applicant provided a printout summary (summary) of claims made to the respondent's insurer from September 11, 2016 to November 12, 2016, which total \$155.22. The only indication as to who paid for the expenses that were submitted are handwritten notes made on the summary, presumably by the applicant.
13. The summary indicates that there were five reimbursements made for items that related to the applicant, totalling \$97.84. There were two reimbursements for items that related to the respondent which the handwritten notes indicate were paid for by the applicant and these total \$40. The summary indicates that all reimbursements were paid to the respondent. The balance of the expenses referenced on the summary, in the amount of \$17.38, were for items relating to the respondent that the handwritten notes indicate were paid for by the respondent.
14. The respondent did not address this aspect of the applicant's claim in his written argument, despite addressing the applicant's claim for other health expenses for which she is also seeking reimbursement. The respondent also does not deny that the applicant paid for the expenses. On balance, I find that the applicant paid for the expenses she is claiming and I find that the respondent is liable to pay

\$137.84 for the reimbursements he received from his health insurer for items submitted prior to the parties' separation.

15. The applicant also claims \$265.93 for receipts that she says she gave to the respondent after the parties separated. This amount is documented by a handwritten note which lists a number of health expenses, totaling \$265.93. The applicant also submitted an e-mail exchange with the respondent on March 11, 2017, in which she advised him where she would be leaving the receipts and to return them to her if he did not submit them to his insurer. Copies of the actual receipts were not submitted by the applicant.
16. The respondent acknowledges that he accepted receipts from the applicant after the parties separated. He says that he never submitted the receipts to his insurer because he was uncomfortable doing so when the parties were no longer spouses. He denies receiving any reimbursements and says that he still has the receipts and can return them to the applicant "if needed. The respondent says that the fact that he still has the receipts is proof that he never submitted them but he has submitted no evidence beyond that assertion. The respondent also submitted a screenshot of a webpage summary of claims he made to his insurer in late 2016, which he says shows his most recent claims to the insurer. The screenshot does not cover the period of March and April, 2017 when the applicant gave the respondent the further receipts.
17. Whether the respondent received reimbursement from his insurer for the receipts that the applicant gave to him after the parties separated is a matter that is exclusively within the respondent's knowledge. The respondent says he still has the receipts and has submitted some evidence corroborating that. The respondent was not required to submit the receipts and there is no evidence confirming that the respondent has received any reimbursements for them. I am unable to find that he is liable to the applicant for the total of the receipts given to him by the applicant after the parties separated. While there seems to be no compelling reason for the respondent to keep the receipts, the applicant did not

seek an order for their return in her Dispute Notice. Nothing in this decision precludes the respondent from voluntarily returning the receipts to the applicant.

The tens machine

18. The respondent does not dispute that when they lived together, the parties split the \$90 cost of a Tens machine, which the respondent still possesses.
19. Although the respondent has agreed to return the Tens machine to the applicant if the applicant does “seek money” for it, there is no evidence about its current condition. Specific performance is generally only ordered if a monetary order will not be sufficient. I find that it is more appropriate to order the respondent to pay \$45 to the applicant for her share of the purchase price of the Tens machine. This decision does not preclude the parties from mutually agreeing, in writing, that the respondent return the Tens machine to the applicant instead of paying her \$45.

Loans to the respondent

20. The applicant says that she loaned various sums of money to the respondent, particularly after they separated. In support of this claim, she submitted various e-mail exchanges between herself and the respondent.
21. The respondent says that he is “unsure of the details” of the loans and that the full e-mail trail, some of which was redacted by the applicant, should be provided by the applicant.
22. The only independent evidence corroborating the alleged loans is an April 3, 2017 e-mail which indicates that the respondent asked the applicant for \$20 to \$30 dollars and that the applicant loaned some amount of money to the respondent. Based on that limited evidence, I award the applicant \$20 for loans made to the respondent. I find the applicant has not proved her claim for any other loans.

Joint expenses

23. The applicant says that the respondent owes her for joint expenses that she paid for in the last month of their relationship, including the respondent's compass card, food, parking, and gas (joint expenses). The applicant submitted a spreadsheet summarizing the joint expenses. She also submitted an e-mail that she sent to the respondent on October 29, 2017 in which she advised the respondent that he owed her \$192.40 for the joint expenses and wrote "I can dig out credit card statements showing amounts." The applicant did not submit any receipts or credit card statements as evidence.
24. There is no independent evidence that the respondent owes the applicant for the joint expenses. The applicant has not provided copies of any documents which confirm that she paid for the items she has made claims for. I find that the applicant is not entitled to any compensation for the joint expenses she has claimed.

The Rogers credits

25. The applicant says that the respondent received credits from Rogers when he cancelled her cellphone after the parties separated. In support of this claim, she submitted a December 3, 2016 message from Rogers which indicates that credits in the amount of \$16.75 and \$15.83 had been issued to the respondent. The applicant says that she paid for the cost of her cellphone, even though it was under the respondent's plan.
26. The respondent does not deny that the applicant paid for the cost of her cell phone, that he cancelled the applicant's cell phone, that the credit he received related to the cancellation of the applicant's phone, or that he kept the credit from Rogers. Instead, he says simply that he was entitled to cancel the line because it was under his account and that he never agreed that he would pay any credit he received from Rogers to the applicant.

27. It is clear that the respondent received credits from Rogers after the parties separated. Based on the evidence about how the parties arranged payment of the Rogers account and the fact that the credits were issued very shortly after the parties separated, I find that the credits the respondent received were related to the cancellation of the applicant's cell phone and monies that the applicant had paid towards her share of the bill. I order the respondent to pay the applicant \$32.58 for the Rogers credits.

The shower head

28. The applicant says that while she was living with the respondent, she installed a new hand held shower head in the apartment they shared. In support of her claim for the cost of a replacement shower head, she submitted:
- a. A copy of e-mail correspondence between herself and the respondent's current partner, dated December 27, 2016, who acknowledged that the shower head was still at the respondent's residence: and
 - b. A printout from Canadian Tire's website which describes a "Peerless 4 Setting Hand-Held Showerhead" costing \$39.99.
29. The respondent does not dispute that he never returned the shower head to the applicant. In his argument, the respondent says that he did not have the right tools to remove the showerhead and will not permit the applicant or any acquaintance of hers to attend at his residence. The respondent says that he eventually threw out the "old showerhead" at his residence as he was "not aware that after all of this time", the applicant would still be requesting the shower head back.
30. The applicant advised the respondent that she wanted the showerhead back as early as December 27, 2016. The respondent acknowledges that he has kept the showerhead and will not permit the applicant to attend at his home. I find that the respondent owes the applicant for the cost of a replacement shower head, which

I find is \$39.99 plus applicable taxes, for a total of \$44.79. As the amount awarded is for the current replacement cost, no pre-judgment interest is payable by the respondent for this item.

The apartment

31. Shortly before they separated, the applicant and the respondent signed a one year lease for a two bedroom apartment (apartment) in Burnaby. The applicant moved into the apartment and still lives there. The respondent never moved into the apartment. The applicant paid all of the rent at the apartment although she acknowledges that the respondent gave her \$600.00 for the first month's rent shortly before they separated. Although the initial lease was for one year, the applicant says she still lives in the apartment.
32. The applicant claims reimbursement for part of the rent that she paid for the apartment. She says that she felt that she had no choice but to move into the apartment after the parties separated and that the parties decided to lease the apartment to accommodate the respondent's children. She says she did not require such a large apartment.
33. The respondent says that he felt pressured to move into the apartment by the applicant and was in no rush to leave his current home, where he still lives. He says the applicant chose to live at the apartment and made no attempt to escape the lease or find a roommate to lower her living costs.
34. Both parties were liable to the landlord under the lease, which was a legally binding contract. When the respondent decided not to move in, the applicant nevertheless decided to perform the contract and moved into the apartment. To her credit, the applicant's decision to move into the apartment and pay the rent may have averted a claim against both parties by the landlord but this was not a situation where she received nothing for her payments. Instead, she had the benefit of living at the apartment in exchange for her payment of the rent. I find that the respondent is not liable to reimburse the applicant for any of the rent that

she has paid for the apartment, particularly given that she also received \$600 from the respondent towards the first month's rent.

35. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Because the applicant's claim was successful in that she was awarded some of the compensation claimed and because she had been paid nothing by the respondent prior to filing the Dispute Notice, I see no reason in this case not to follow the general rule and order reimbursement of the applicant's tribunal fees of \$125. The applicant did not claim any dispute related expenses.

ORDERS

36. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$407.99, broken down as follows:
- a. \$280.21 to compensate the applicant for reimbursements the respondent received from his health insurer, the credit from Rogers, the Tens machine, the shower head, and monies the applicant loaned to the respondent;
 - c. pre-judgment interest under the *Court Order Interest Act*, as follows:
 - i. \$1.62, calculated from January 1, 2017, for reimbursements received from the health insurer for receipts submitted before the parties separated;
 - ii. \$0.56, calculated from December 1, 2016, for the applicant's share of the purchase price of the Tens machine;
 - iii. \$0.20, calculated from April 3, 2017, for the loans to the respondent;
- and

iv. \$0.40, calculated from December 3, 2016, for the credits from Rogers;
and

d. \$125 in tribunal fees.

37. The applicant is entitled to post-judgment interest, as applicable.
38. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
39. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Adam Shee, Tribunal Member