



Civil Resolution Tribunal

Date Issued: September 21, 2018

File: SC-2018-000142

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Easyway Lending Group Inc v. SEELEY*, 2018 BCCRT 543

B E T W E E N :

Easyway Lending Group Inc

APPLICANT

A N D :

JENNIFER SEELEY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a payday loan. In particular, whether the applicant Jennifer Seeley owes the respondent Easyway Lending Group Inc a balance of \$418.30. The parties are 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. Neither party requested 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 the Act and tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

6. The issue in this dispute is to what extent if any the respondent owes the applicant an outstanding balance of \$418.30 for a payday loan.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. In the payday loan at issue in this dispute, the respondent borrowed \$515 on October 18, 2017, plus \$87.55 as the “cost of borrowing”, for a total loan amount of \$602.55. The respondent agreed to repay the loan on October 27, 2017. However, the respondent’s payments were returned “NSF”.
9. In the parties’ lending agreement, the “annual percentage rate”, which I infer refers to interest, was expressed as 689.44%. Elsewhere in the lending agreement, it stated that interest was calculated at “a flat rate of 17%”, payable on the due date. In this dispute, the applicant does not claim contractual interest, other than in the January 5, 2018 application for dispute resolution it stated that the \$668.30 claimed was inclusive of fees and interest to date.
10. The respondent paid \$125 on April 14, 2018, and another \$125 on May 12, 2018. This reduced the applicant’s original claim of \$668.30 to the currently claimed amount of \$418.30. While it is unfortunate that the respondent has had some financial and medical concerns, those issues are not the applicant’s responsibility. The respondent remains responsible for the debt, as agreed.
11. However, I am unable to reconcile the original loan amount of \$602.55 and the \$668.30 originally claimed (before the respondent’s payments). First, the applicant did not provide an explanation of how they calculated the interest in arriving at their original \$668.30 claim amount. Second, the interest rate reflected in the lending agreement appears to exceed the 60% criminal rate of interest, in which

case I would treat the interest provision in the agreement as void. I also note that in its dispute application, the applicant claimed only interest under the *Court Order Interest Act* (COIA), rather than specifying a contractual rate. The applicant also did not claim a contractual interest rate in its submissions. For all these reasons, I find the applicant is entitled to only \$602.55 - \$250 (the respondent's payments), for a net balance owing of \$352.55.

12. In accordance with the Act and the tribunal's rules, as the applicant was substantially successful in this dispute, I find it is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

13. Within 14 days of this decision I order the respondent to pay the applicant a total of \$481.26, comprised of:
 - a. \$352.55 as final payment of the October 18, 2017 payday loan,
 - b. \$3.71 in pre-judgment interest under the COIA, from October 27, 2017, and
 - c. \$125 in tribunal fees.
14. The applicant is entitled to post-judgment interest, as applicable.
15. 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.
16. 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.

Shelley Lopez, Vice Chair