



# Civil Resolution Tribunal

Date Issued: November 14, 2018

File: SC-2018-002821

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rossall v. Rose*, 2018 BCCRT 726

**B E T W E E N :**

Joseph Rossall

**APPLICANT**

**A N D :**

Ashley Rose

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION AND JURISDICTION**

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent Ashley Rose, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.

2. During their relationship, the applicant, Joseph Rossall, opened an account with Telus for the respondent's cell phone in his own name. After they broke up, he says she failed to pay the phone bill, which went to collections. The applicant asks to be reimbursed the \$3,207 he paid to settle the debt.
3. The duration of the parties' relationship was not before me. As there is no evidence that the parties lived together for more than two years, I find that the *Family Law Act* does not apply to this dispute.
4. The parties are each self-represented.
5. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.

7. Under 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.
8. For the reasons that follow, I have allowed the applicant's claims.

## **ISSUES**

9. The first issue in this dispute is whether I should proceed to hear the applicant's claim, without the respondent's further participation given the respondent's non-compliance.
10. The second issue is to what extent I should order the respondent to pay the applicant the claimed \$3,207.

## **EVIDENCE & ANALYSIS**

### ***Non-compliance***

11. My September 4, 2018 summary decision to hear the dispute without the respondent's participation, given the respondent's non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
12. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact her with a request for a reply.

13. In particular, the Dispute Notice was issued on May 7, 2018. The respondent filed her Response on June 17, 2018. The facilitator made the following attempts at contact:

- a. **July 7, 2018** – The case manager emailed the parties to arrange a telephone conference, and requested a response within 72 hours. The respondent did not reply.
- b. **July 13, 2018** – The case manager emailed the respondent saying she had not had a reply to the July 7, 2018 email, and asked for the respondent to provide her availability for a call by choosing a time from a list of options, and to respond by July 16, 2018. The respondent did not reply.
- c. **July 24, 2018** – The case manager phoned the respondent. The respondent did not answer. The case manager left a message saying she would call again on July 25, 2018 at 10:00 a.m. The case manager also emailed saying she would call on July 25 and noting that if she had no reply the matter would be referred to the tribunal for a decision without the respondent's input.
- d. **July 25, 2018** – At 10:00 a.m., the case manager called the respondent, but there was no answer. The case manager left a voice mail asking the respondent to check her email and respond by Friday. The respondent did not reply.
- e. **August 10, 2018** - The case manager emailed the respondent indicating that she must confirm her attendance at an August 21, 2018 telephone conference not later than August 15, 2018, or the dispute would be referred to a tribunal member who could decide the dispute without her further participation. The respondent did not reply.

14. The facilitator referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute in the absence of participation from the respondent.

***Should the tribunal hear the applicant's dispute?***

15. As noted, the respondent provided no explanation about why she suddenly stopped communicating with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the respondent. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find it is more likely than not that the respondent was aware of the attempts to contact her and chose not to respond.
16. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
17. First, this claim does not affect persons other than the parties involved in this dispute.
18. Second, the non-compliance here occurred at the outset of the facilitation process and no substantive discussions between the parties occurred. The respondent has effectively abandoned the process after providing a response. Third, given the facilitator's repeated attempts at contact and the respondent's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
19. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear

the dispute is outweighed by the circumstances of her non-compliance. If I refused to proceed to hear the dispute, the applicant would be left entirely without a remedy and that would be unfair.

20. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
21. In weighing the factors, I find the applicant's claims should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
  - a. the extent of the non-compliance is significant;
  - b. the applicant is not prejudiced if such an order is made; and
  - c. the need to conserve the tribunal's resources.

### ***Merits of the Dispute and Damages***

22. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against that respondent. This simply means that if the person refuses to participate, then it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response at all to the dispute and is in default.
23. Having said that, I will review the Dispute Response because it was filed on June 17, 2018, prior to the respondent's non-compliance.
24. The respondent agrees that she owes the applicant the \$3,207. She says she had personal issues after the break up that left her unable to make the payments. While that may be true, that does not affect the respondent's obligation to repay the debt.

25. The only other issue is the request, by the applicant, to have his credit rating restored, given that the cell phone bill was in his name and went unpaid. This relief cannot be provided by the respondent, so I will not grant it.
26. This is a simple debt claim admitted by the respondent. I find that the respondent owes the applicant the \$3,207 claimed.
27. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$3,207 from February 12, 2018, which is when I find the amount owing was paid, to the date of this decision.

## **ORDERS**

28. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$3,414.11, comprised of:
  - a. \$3,207.00 for the debt,
  - b. \$32.11 in pre-judgment interest under the COIA, and
  - c. \$175 in tribunal fees.
29. The applicant is also entitled to post-judgment interest under the COIA.
30. 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.
31. 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.

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Julie K. Gibson, Tribunal Member