



# Civil Resolution Tribunal

Date Issued: December 21, 2018

File: SC-2018-000963

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moon v. Cross*, 2018 BCCRT 894

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

David Moon

**APPLICANT**

**A N D :**

Dustin Cross

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Megan Volk

### **INTRODUCTION**

1. This is a dispute about nonpayment for delivery work performed under a verbal contract. The applicant, David Moon, says the respondent, Dustin Cross, breached an agreement between the parties by failing to pay for deliveries completed. The applicant claims \$1,705 for work performed.
2. The applicant and respondent each represent themselves.

## JURISDICTION AND PROCEDURE

3. 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 relationships between parties that may continue after the dispute resolution process has ended.
4. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence.
5. In the circumstances here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
6. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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.

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.

### ***Jurisdiction over Employment Matters***

8. The parties agree that the applicant was an independent contractor, rather than an employee of the respondent. For that reason, I find the applicant's claim for payment is within the tribunal's small claims jurisdiction under the Act and is not within the exclusive jurisdiction of the Employment Standards Branch under the *Employment Standards Act*.

### **ISSUES**

9. The issue in this dispute is whether the applicant is entitled to \$1,705 for work performed.

### **EVIDENCE AND ANALYSIS**

10. The applicant bears the burden of proof on a balance of probabilities.
11. I have commented upon the relevant evidence and submissions only to the extent necessary to give context to these reasons. In doing so, I note that the respondent provided a Dispute Notice but did not provide evidence or submissions despite notice and requested deadline extensions.
12. The applicant says he did not receive payment of \$1,705 for deliveries made between November 2017 and February 2018 under a verbal contract. The respondent admitted in his Dispute Response that he owes the applicant \$1,125 for deliveries in December 2017 and January 2018. Based on this admission, I order the respondent to pay the applicant \$1,125 for those deliveries.
13. Also, I find that the applicant has met the burden of proving his claim for payments from November 2017. The applicant produced a Facebook message from February

where the applicant said, in part, \$400 was owing for November 2017 and the respondent replied “kk”. Given the lengthy text communications reviewed between the parties, I find that “kk” was the applicant agreeing with the respondent.

14. Although the respondent’s Dispute Response denied owing the applicant for deliveries in November 2017, the respondent did not provide evidence or submissions to dispute the Facebook message. As such, I find the respondent acknowledged he owed the applicant the \$400. Given that there is no evidence before me that the November 2017 payment was made, I find the applicant is entitled to the \$400 payment.
15. I find that the applicant has not met the burden of proving his claim for payments from February 2018. The applicant says the amount owing is \$105 from 21 deliveries. The applicant provided grocery delivery slips as evidence of the deliveries. The slips do not have dates proving they are from February 2018. And, the applicant did not provide any further particulars or evidence to establish work performed in February 2018.
16. Given the respondent’s admission and my conclusions above, I find the applicant is entitled to \$1,525 (\$400 + \$1,125) for work performed. The applicant is also entitled to interest under the *Court Order Interest Act* (COIA) from November 30, 2017 and January 31, 2018.
17. In accordance with section 49 of the Act and the tribunal’s rules, I find the applicant was substantially successful and is entitled to reimbursement of his \$125 in tribunal fees. Neither party claimed dispute-related expenses, so none are ordered.

## **ORDER**

18. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$1,668.68, broken down as follows:
  - a. \$1,525 for work performed,
  - b. \$18.68 in pre-judgment interest under the COIA, and

c. \$125 for tribunal fees.

19. The applicant is entitled to post-judgment interest, as applicable.
20. 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.
21. 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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Megan Volk, Tribunal Member