



# Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-002525

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *HERMES v. City of Delta*, 2018 BCCRT 909

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

Niels HERMES

**APPLICANT**

**A N D :**

City of Delta

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Volk

### INTRODUCTION

1. This is a dispute about a municipality declining to extend a bylaw exemption to earlier calendar years. The bylaw exemption relates to secondary suite utility fees. The applicant, Niels Hermes, asks for a refund of \$1,435 paid to the respondent, City of Delta, in 2016 and 2017.
2. The applicant is self-represented. The respondent is represented by an employee.

3. For reasons set out below, I find the tribunal does not have jurisdiction to consider the claim filed by the applicant. Consequently, I refuse to resolve this claim.

## **JURISDICTION AND PROCEDURE**

4. 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).
5. Under section 10(1) of the Act, where the tribunal does not have jurisdiction, I must refuse to resolve the claim.
6. 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.
7. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because there are no significant issues of credibility or other reasons that might require an oral hearing.
8. 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.
9. 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.

## ISSUES

10. The issues in this dispute are:
  - a. Does the tribunal have jurisdiction over this dispute? and
  - b. Was the refusal to grant an exemption reasonable and fair?

## EVIDENCE AND ANALYSIS

11. I have only referenced the evidence and submissions as necessary to give context to my decision.
12. The respondent collects a flat rate utility fee for secondary suites in homes. The applicant has a secondary suite in his home. In 2018, the applicant became aware that the city waives the utility fee for secondary suites in certain circumstances. He applied for an exemption and received it.
13. At the same, the applicant requested exemptions for 2016 and 2017. The mayor and council denied the applicant's requests because they were not for the current calendar year.
14. The applicant asks the tribunal to award him \$1,435, which is the total utility fees he says he paid for the secondary suite in 2016 and 2017.
15. The respondent says the tribunal does not have jurisdiction to hear this dispute because this is not a claim in debt or damages within the tribunal's jurisdiction. Alternatively, the respondent says the decision of the mayor and council was reasonable and fair.
16. The applicant does not challenge the municipality's bylaw under the *Local Government Act* but asks the tribunal to order the respondent to return the fees he paid. Implicit in the applicant's request is that the city's exemption policy does or should apply retroactively to prior calendar years. For the applicant to succeed the tribunal must conclude that the mayor and council made an error in refusing exemptions for 2016 and 2017, which the applicant applied for in 2018.

17. I agree with the respondent that the applicant is, in effect, using the tribunal to review the decision of the mayor and council. The tribunal does not have the jurisdiction to review such a decision. The proper avenue for review for the applicant is set out in the *Judicial Review Procedures Act*.
18. The tribunal only has jurisdiction to provide relief specified in the *Act*. Section 3.1 of the *Act* gives the tribunal jurisdiction over small claims under \$5,000, to resolve a claim for relief in the nature of debt or damage, recovery of personal property, specific performance of an agreement relating to personal property or services or relief from opposing claims to personal property. This is not a debt matter, nor any other claim for relief under s. 3.1 of the *Act*.
19. Having found the tribunal does not have jurisdiction, I have not considered whether the refusal to grant an exemption was reasonable and fair. This is not a final decision as to the substance or merits of this dispute.
20. Given my decision to refuse to resolve the dispute, the tribunal will refund any tribunal fees paid to date.

## **ORDERS**

21. I refuse to resolve the applicant's claims and this dispute.

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Megan Volk, Tribunal Member