



Civil Resolution Tribunal

Date Issued: February 21, 2019

File: SC-2018-005906

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *de la Fosse v. Lietz*, 2019 BCCRT 208

B E T W E E N :

Susan de la Fosse

APPLICANT

A N D :

Allan Lietz

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a paid deposit for a 5th wheel trailer. The applicant, Susan de la Fosse, paid \$2,000 to the respondent Allan Lietz for the trailer. The applicant discovered damage on the trailer after delivery.

2. Originally, the applicant claimed a refund of the \$2,000 deposit as against both Mr. Lietz and Clayton Ivan, noting that Mr. Ivan was the person who moved the trailer during the delivery. However, Mr. Ivan paid her \$500 and the applicant withdrew her claim against him. As such, I have amended the style of cause above accordingly. So, in this dispute the applicant claims a \$1,500 refund of her deposit from Mr. Lietz alone.
3. In this proceeding, Mr. Lietz did not file the required Dispute Response, despite being properly served and is therefore in default.
4. The applicant is self-represented. As noted, Mr. Lietz did not participate. For the reasons that follow, I allow the applicant's claims in part.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is whether the respondent must refund the applicant \$1,500 from the trailer deposit.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. The evidence shows that the applicant sent Mr. Lietz the Dispute Notice by registered mail and that someone at Mr. Lietz' address signed for it on August 22, 2018. I find Mr. Lietz was properly served and failed to file a Dispute Response as required. As noted above, Mr. Lietz is therefore in default.
12. Where a party is in default, liability is assumed. This means the applicant does not need to prove Mr. Lietz is at fault for her debt claim. This is generally because where a respondent chooses not to participate, it is reasonable to assume the applicant's position is correct. I find this approach reasonably applies here, with caveats as noted below.
13. In the August 13, 2018 Dispute Notice for this proceeding, the applicant claimed \$2,000 for the trailer deposit refund. As noted, she has reduced this to \$1,500 to reflect the \$500 she received from Mr. Ivan. Given that he is in default, I find Mr. Lietz owes the \$1,500 as claimed.
14. The applicant is entitled to pre-judgment interest on the \$1,500 under the *Court Order Interest Act*, from November 27, 2016, the date the applicant discovered the trailer damage which is a date I consider reasonable in all of the circumstances.

15. In the same August Dispute Notice, the applicant also claimed reimbursement of \$75 that she paid as tribunal fees in an earlier dispute against Mr. Lietz, SC-2017-002391. The applicant stated in August Dispute Notice that she withdrew the earlier dispute because Mr. Lietz promised to help her get the \$2,000 from Mr. Ivan, but then Mr. Lietz never helped her and refused to communicate. Again, given that he is in default, I find Mr. Lietz owes the claimed \$75 for tribunal fees related to SC-2017-002391.
16. For this proceeding, the applicant claims \$150 in tribunal fees. However, she has already been refunded \$25 that she paid for a default application that did not proceed. Therefore, in accordance with the Act and the tribunal's rules I find the applicant is entitled to reimbursement of \$125 in fees for this dispute.
17. Finally, in her submissions for this decision the applicant claims \$246 or \$250 in expenses. She has provided a \$21 receipt for serving both Mr. Lietz and Mr. Ivan with the Dispute Notice in this proceeding. I find she is entitled to half of that, \$10.50, from Mr. Lietz. Otherwise, the applicant has not provided proof of any other expenses nor an explanation. I therefore dismiss the applicant's expense claim apart from the \$10.50.

ORDERS

18. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,746.06, broken down as follows:
 - a. \$1,500 in debt,
 - b. \$35.56 in pre-judgment interest under the COIA, and
 - c. \$210.50, for \$200 in tribunal fees and \$10.50 in dispute-related expenses.
19. I dismiss the applicant's remaining claims against Mr. Lietz. The applicant is entitled to post-judgment interest, as applicable. As noted, the applicant's dispute as against Clayton Ivan was withdrawn.

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.

Shelley Lopez, Vice Chair