



Civil Resolution Tribunal

Date Issued: February 22, 2019

File: SC-2018-001439

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dancho v. Tangerine Bank et al*, 2019 BCCRT 213

B E T W E E N :

Braylon Dancho

APPLICANT

A N D :

Tangerine Bank and Desjardins Trust Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a financial transaction. The applicant, Braylon Dancho, says that the respondents, Tangerine Bank and Desjardins Trust Inc., inappropriately reversed a transfer of funds into his account at Tangerine Bank. He says that he suffered financial losses and depression as a result of the respondents' actions, and

claims \$4,900.00 in damages from them. The respondents deny responsibility for the damages claimed by the applicant.

2. The applicant is self-represented. The respondents are represented by employees.

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 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.
4. 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.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. whether the respondents must reimburse the applicant's monetary losses of \$1,900.00;
 - b. whether the respondents must reimburse the payment of \$1,100.00 that cleared into the applicant's account in November of 2017;
 - c. whether the respondents must pay the applicant \$900.00 for inconvenience and time spent on this matter; and
 - d. whether the respondents must pay the applicant \$1,000.00 for suffering and depression.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant made several transactions selling bitcoin to a buyer using the screen name "kingofmylife". When a November 20, 2017 Interac transfer of \$1,100.00 arrived in the applicant's account with Tangerine Bank, he released a sum of bitcoin to the buyer.
10. The \$1,100.00 Interac transfer was initiated from an account at a financial institution which is part of the Desjardins Group. The account holder reported suspicious activity in their account, including the transfer to the applicant. An investigation determined that the transfer from the client's account to the applicant was fraudulent. The Desjardins Group cancelled the transaction from its client's account. The Tangerine Bank removed the \$1,100.00 from the applicant's account and repaid this amount to the Desjardins Group.

11. While the investigative process was underway, the applicant's Interac account was blocked until it was confirmed by Tangerine Bank that he had been the victim of a fraud.
12. The applicant says that he made a legitimate transaction with the bitcoin buyer, and the transaction was successfully performed. His position is that the respondents inappropriately removed the transferred funds from his account, and that he suffered financial losses and depression as a result. He says that, in addition to the \$1,100.00 that was removed from his account, he lost the ability to make additional bitcoin transactions. He values this loss at \$1,900.00. According to the applicant, the respondents have not proven that the payment he received was fraudulent. The applicant also says that Tangerine Bank lied to him, manipulated him, and breached its duty as a financial service provider.
13. Tangerine Bank says its conduct in investigating the fraudulent transaction was in accordance with its Account Terms and Privacy Code. Once it determined that the applicant was the victim of a scam, Tangerine Bank says that the applicant's accounts were unblocked and the fraudulent transfer reversed. Tangerine Bank's position is that it did not breach its duty to the applicant and is not liable to the applicant.
14. Desjardins Trust Inc. says it is not properly named as a party in this dispute as it has no relationship with the applicant, does not owe any duty to him, and is not responsible for any of his claimed losses. Desjardins Trust Inc. suggests that the appropriate party would be the Fédération des Caisses Desjardins du Québec. However, as this entity is not a party to this dispute, I cannot make any orders respecting it.
15. I am satisfied that the evidence before me in this dispute supports the conclusion that the transfer of \$1,100.00 to the applicant's account was fraudulent and not authorized by the issuing account holder. The applicant does not suggest, and the evidence does not establish, that the respondents were involved with this fraud. The thrust of the applicant's argument is that financial institutions should bear the

responsibility for detecting fraud and addressing fraudulent transactions. He suggests that Tangerine Bank's terms are unconscionable and that other financial institutions offer their customers preferable terms. I find these submissions are not determinative of the matter.

16. I find that the applicant had no relationship with Desjardins Trust Inc. Accordingly, I dismiss his claims against it.
17. The applicant did have a relationship with Tangerine Bank in the form of his account. The applicant's relationship with Tangerine Bank is governed by its Account Terms and Privacy Code, which permits Tangerine Bank to reverse deposits and place holds on accounts. The applicant agreed to those terms when he opened his account with Tangerine Bank. This agreement also contains a limitation of liability, which states that Tangerine Bank is not responsible for any losses that may result from the use of its products. I find that the conduct of Tangerine Bank was permitted under the terms of its agreement with the applicant, and that it did not breach any duty to him.
18. There is no dispute that the applicant suffered a loss of the \$1,100.00, but the evidence establishes that this loss was caused by fraud committed by someone other than the respondents. Nothing in my decision prevents the applicant from pursuing an action against "kingofmylife" or any other individual who perpetrated the fraud against him. I find that the respondents are not responsible for any of the damages claimed by the applicant, and I dismiss his claims against them.
19. Given my conclusions above, I do not need to address the applicant's claims for time spent or damages for
20. Based on the applicant's suggestion that he may continue with this dispute and add extra parties, Tangerine Bank requested an order requiring the applicant to sign a release. I will not make an order based on the possibility of future events, or which may impact the applicant's ability to pursue his claims, if he so desires, as permitted by the Act.

21. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The respondents did not claim tribunal fees or dispute-related expenses. As the applicant was unsuccessful, I dismiss his claim for reimbursement of tribunal fees and expenses.

ORDER

22. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member