



Civil Resolution Tribunal

Date Issued: March 18, 2019

File: SC-2018-005623

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mackay v. Herron*, 2019 BCCRT 332

B E T W E E N :

Mitchell Mackay

APPLICANT

A N D :

Jessica Candice Herron

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Mitchell Mackay says holds a personal line of credit, though TD Bank, with the respondent. He says the respondent stopped making payments on the line of credit in April 2018. The applicant asks that the respondent make the payments and have his name taken off the loan. The applicant also asks that the respondent repay him \$4,633.25.

2. The respondent says she has been making the payments on the loan as required. She asks that the dispute be dismissed.
3. The parties are each self-represented.

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 118 of the *Civil Resolution Tribunal 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.
5. 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.
6. 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.
7. 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.

8. The evidence does not establish that the parties were living together in a spouse-like relationship for more than two years, so the provisions of the *Family Law Act*, regarding family debt, do not apply.

ISSUES

9. The main issue in this dispute are whether the respondent owes the applicant the claimed amounts. As well, I must consider whether I can grant the applicant the relief sought by removing him from the TD Bank Line of Credit.

EVIDENCE AND ANALYSIS

10. This is a civil claim where the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions, but only refer to them as necessary to explain my decision.
11. On September 15, 2014 the applicant says he loaned the respondent money.
12. The applicant is also the co-signor on a line of credit, held at TD Bank, with the respondent. He says the agreement is that the respondent is the one "...who will be making the payments." The applicant provided no evidence that the respondent agreed to make all payments on the line of credit.
13. The documents filed in evidence show, and I find, that both the applicant and respondent were "borrowers" on the TD Line of Credit.
14. In April 2018, the applicant says the opening balance on the line of credit was \$4,609.62. He says the respondent failed to a payment for April 2018. The TD Bank then called the applicant and he paid \$60 toward the account.
15. The applicant says the respondent has missed payments on the line of credit since then. He says he has made payments of \$610 in that interval.

16. The respondent agrees that she owes the applicant \$610. In her submissions, she agreed to make monthly payments of \$100 until she has caught up on her payments to him.
17. Based on the TD bank documents filed in evidence, I find the following facts:
 - a. The applicant and respondent co-signed a line of credit with TD Bank on September 15, 2014.
 - b. It was used to pay two credit card balances of \$4,600 and \$2,400, respectively, or \$7,000 total.
 - c. Payments were being made on the line of credit regularly until April 2018.
 - d. At that point, the parties agree, and I find, that the respondent failed to make payments of \$610, which were instead made by the applicant.
18. Based on this evidence, I find the respondent must repay the applicant \$610 owing to him, because the respondent agrees he paid this money as a loan to her.
19. However, I cannot grant the relief sought to remove the applicant from the line of credit itself. That is an issue between the parties and TD Bank. The documents show he is a borrower on that account.
20. As well, I cannot grant the relief to have the \$4,633.25 re-paid. It is not clear, on the applicant's materials, whether he wants that repaid to himself or to the TD Bank. I was not provided documentary evidence that he lent this money to the respondent directly, only that there is a TD Bank line of credit in the names of both the applicant and respondent. The applicant has failed to establish this aspect of his debt claim on a balance of probabilities and I dismiss it.
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. Because the applicant was partly successful, I find he is entitled to reimbursement of half his tribunal fees, or \$87.50 in tribunal fees and \$73.50 in dispute-related expenses for courier costs which I find reasonable.

ORDERS

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$780.94, broken down as follows:
- a. \$610 as reimbursement for money paid on the respondent's behalf,
 - b. \$9.94 in pre-judgment interest under the *Court Order Interest Act*, from June 1, 2018 to the date of this decision, and
 - c. \$161, for \$87.50 in tribunal fees and \$73.50 for dispute-related expenses.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Julie K. Gibson, Tribunal Member