



# Civil Resolution Tribunal

Date Issued: April 4, 2019

File: SC-2018-004344

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Soderholm v. Snyder*, 2019 BCCRT 426

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

Angela Swim Soderholm

**APPLICANT**

**A N D :**

Eric Snyder

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Angela Swim Soderholm says her nephew Eric Snyder agreed to pay hydro and gas bills while he rented her house, but that he failed to make those utility payments. She asks for \$1,535 and a letter of apology.
2. The respondent disagrees and 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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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 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.
9. The *Residential Tenancy Act* (RTA) applies to the applicant's claim for a half month's rent for July 2017. For this reason, I find that aspect of the claim, for \$475 owing, to be outside the tribunal's jurisdiction.
10. However, I find that the claim regarding payment of utilities to be separate from the tenancy agreement. I find it is a debt claim within the tribunal's jurisdiction.

## **ISSUE**

11. The issue in this dispute is whether the respondent agreed to pay gas and hydro utility expenses while living at the applicant's property.

## **EVIDENCE AND ANALYSIS**

12. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
13. The parties agree that they had a handwritten agreement for the respondent to lease the applicant's property, with an option to purchase it. The respondent was to pay \$975 a month in rent under the agreement. Neither party filed that agreement in evidence.
14. The respondent moved into the property in July 2016.

15. In August 2016, the applicant received an email from BC Hydro saying she was past due on a hydro bill of \$133.20 for the property.
16. In December 2016, the applicant received an email from BC Hydro saying she was past due on a hydro bill of \$300.46 for the property.
17. In February 2017, the applicant received an email from BC Hydro saying she was past due on a hydro bill of \$300.46 for the property.
18. On May 6, 2017, the respondent texted the applicant saying he was planning to pay the hydro.
19. On July 14, 2017, the applicant received an email from BC Hydro indicating that she had not paid her final bill from her closed account at the property address, in the amount of \$890.93. The email demands payment and says a referral will be made to a collection agency if the bill is not paid.
20. The respondent purchased the property on July 15, 2017.
21. I find that the Fortis gas bill for the property had also been referred to collections, with \$297.44 owing. I find that the applicant paid this bill on June 28, 2018.
22. The applicant says that the verbal agreement with the respondent was that he would pay for utilities while he lived at the property.
23. The applicant's sister, who is another aunt of the respondent, provided a letter in which she says she knew about the arrangement whereby the applicant rented the property to the respondent. She says the parties agreed that hydro and gas were to be paid by the respondent.
24. The applicant pointed out that, because she was working in the United States at the time, she cannot have incurred the utility costs. It is uncontested, and I find, that the respondent was residing at the property when the disputed utility expenses were incurred.

25. The respondent says that because the utility accounts were in the applicant's name, she should pay them. The applicant says she had agreed to leave the accounts in her name so that both parties could avoid reconnection fees. Based on this evidence that I accept, and the May 2017 text message where the respondent says he will pay the hydro bill, I find that the respondent was living in the house, and was responsible to pay for hydro and gas at the property until July 15, 2017.
26. Based on the invoices filed in evidence, I find that the respondent owes the applicant \$297.44 for the gas bill and \$890.93 for the hydro bill up to the time he purchased the property, for a total of \$1,188.37.
27. It is unclear how the applicant reaches the claimed total of \$1,535. She refers to rent for July 1-15, at \$475, though by my calculation it would have been \$487.50. I decline to consider this aspect of the claim because, as noted above, it relates to a tenancy agreement under the *Residential Tenancy Act* and is therefore outside the tribunal's jurisdiction.
28. I reviewed the respondent's evidence that he spent money on upkeep of the property. He provided copies of receipts for plumbing work done in December and July 2016, in the total amount of \$2,779.
29. The respondent provided copies of three receipts, showing that he spent a total of \$1,200 on labour at the property in March and April 2017. He also provided some Home Depot receipts for plumbing and electrical supplies, power tools and interior wood care.
30. Having said that, I found that the agreement was that he would pay for utilities, separate and apart from any upkeep he might do on the house. The respondent has not proved that these items of maintenance were a requirement of an agreement with the applicant. He did not give evidence about whether these tasks were part of the tenancy agreement, or some separate agreement. I find that he has not proved any set-off. that any set-off is justified.

31. Therefore, I order the respondent to pay the applicant a total of \$1,188.37 for utility expenses. I will use June 28, 2018 as the start date for calculating pre-judgment interest, since that is the date upon which the applicant paid the gas bill and I find it reasonable.
32. I decline to order that the respondent provide a letter of apology because, based on the evidence, it appears unlikely that a required apology letter will mend the relationship. Nothing in this decision prevents the respondent from apologizing to the applicant, should he wish to do so.
33. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$91.50 in dispute-related expenses to serve the Dispute Notice, which I find reasonable.

## **ORDERS**

34. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,419.49, broken down as follows:
  - a. \$1,188.37 as reimbursement for hydro and gas expenses,
  - b. \$14.62 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$216.50, for \$125 in tribunal fees and \$91.50 for dispute-related expenses.
35. The applicant is entitled to post-judgment interest, as applicable.
36. 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.

37. 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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Julie K. Gibson, Tribunal Member