



# Civil Resolution Tribunal

Date Issued: May 13, 2019

File: SC-2018-005685

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kelwood Financial Services Inc. DBA Speedy Cash v. Garrett*,  
2019 BCCRT 568

B E T W E E N :

Kelwood Financial Services Inc. DBA Speedy Cash

**APPLICANT**

A N D :

Brennan Garrett

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a payday loan. The applicant, Kelwood Financial Services Inc. DBA Speedy Cash, says the respondent, Brennan Garrett, failed to repay the \$842

loan as agreed. The applicant claims \$1,111.40, which is the \$842 loan plus fees and 30% annual contractual interest on the overdue principal.

2. The respondent initially stated he did not remember receiving the loan, and later stated he would not provide any evidence or submissions for this dispute.
3. The applicant is represented by an employee, and while he participated, the respondent was 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 (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 the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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 9.3(2), 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**

8. The issue is whether the respondent owes the applicant \$1,111.40 for a payday loan plus accruing contractual interest.

## **EVIDENCE AND ANALYSIS**

9. 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.
10. The evidence shows the applicant gave the respondent \$842 as a payday loan on February 14, 2018, by e-transfer. The evidence also shows the parties agreed that the respondent agreed that the loan would be repaid on February 28, 2018, by the applicant making a debit from the respondent's bank account.
11. As noted above, the loan principle was \$842. There was an agreed loan fee of \$143.14, which amounts to 17%, a permitted amount when the loan was made.
12. The evidence also shows the applicant tried to withdraw the payment twice, and on both occasions there were insufficient funds, leading to the claimed \$20 in NSF charges.
13. The applicant calculates the outstanding contractual interest as \$126.26, as of August 3, 2018, the date it filed this dispute with the tribunal. It seeks that amount, plus accruing contractual interest at the rate of 30% per year.
14. On November 29, 2018, the respondent emailed the applicant and among other things stated, "I am responsible for this loan". While the respondent sought to try

and make payment arrangements with the applicant directly, for reasons unknown to me the loan was not repaid.

15. Given the above, I find the respondent owes the applicant \$842 for the loan principal, \$143.14 for the loan fee, and \$20 for NSF charges, which totals \$1,005.14.
16. What about interest?
17. Section 4 of the federal *Interest Act* says that when an interest rate in a contract is expressed as a rate or percentage for any period less than 1 year, and if the contract does not contain an express statement of the equivalent yearly interest rate or percentage, the maximum allowable interest rate is 5% per year.
18. When the loan became overdue on February 28, 2018, the loan agreement states that a maximum of 2.5% monthly contractual interest applies. The applicant equates this to 30% annual interest. However, contrary to the *Interest Act* requirement, the 30% annual rate is not specified on the loan agreement or on any other supporting documentation filed in evidence. Thus, I find the applicant is entitled only to 5% annual interest on the \$842, from February 28, 2018 the date the loan payment was due to the date of this decision. This equals \$50.64.
19. In accordance with the Act and the tribunal's rules, as the applicant was successful, I find it is entitled to reimbursement of \$125 paid in tribunal fees and \$10.50 in dispute-related expenses, which was reasonably incurred to serve the applicant with the Dispute Notice.

## **ORDERS**

20. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,191.28, broken down as follows:
  - a. \$1,005.14 in debt,

- b. \$50.64 in pre-judgment interest at 5% per year,
- c. \$135.50, for \$125 in tribunal fees and \$10.50 in dispute-related expenses.

- 21. The applicant is entitled to post-judgment interest, as applicable.
- 22. 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.
- 23. 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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Shelley Lopez, Vice Chair