



Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-007410

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bell v. Webb*, 2019 BCCRT 581

B E T W E E N :

Sherry Bell

APPLICANT

A N D :

Joshua Webb

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a loan.
2. The applicant Sherry Bell says she lent \$1,000 to the respondent Joshua Webb on March 21, 2017, but he failed to repay her. The applicant claims \$1,000 plus \$435 which she describes as 2% monthly interest.

3. The respondent says he already repaid the applicant. He asks that he dispute be dismissed.
4. The parties are each self-represented.

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*. 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 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.
7. 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.
8. 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.

9. Under tribunal rule 9.3(2), 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.

ISSUE

10. The issue in this dispute is to whether, or to what extent, the respondent owes the applicant the claimed \$1,000 loan plus contractual interest.

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence, but only refer to it here only to the extent necessary to explain and provide context for my decision.
12. On March 21, 2017, the applicant withdrew \$1,000 in cash from her account. The parties agree that she loaned this \$1,000 to the respondent.
13. Once the applicant has proved the loan, the onus shifts to the respondent to prove he paid.
14. The parties disagree about what happened next. The applicant says the respondent never repaid the money. However, in submissions the applicant referred to having “emails and text messages” confirming that she had not been repaid. The applicant did not file any emails or text messages in evidence.

15. By contrast, the respondent says he repaid the loan. He filed bank documents showing repayments totaling \$965. I find that the respondent's version of events is generally more consistent with the documentary evidence.
16. In particular, I find that he repaid the loan, but only to the extent shown in this documentary evidence, namely bank statements. I do not accept his submission that he repaid the entire amount.
17. I find that the respondent repaid the applicant a total of \$965, consistent with the bank statement filed in evidence that show 8 e-transfers between March 31 and July 1, 2017, and 4 cash withdrawals between June 30 and August 11, 2017.
18. I find prefer the respondent's evidence regarding the cash withdrawal payments, because he was able to identify particular transactions in his bank statements, whereas the applicant claims she was never paid, which is inconsistent with the e-transfer evidence.
19. I have considered the applicant's argument that the two \$50 e-transfers listed above were reimbursed to the respondent and "not related to this loan." However, the applicant did not prove that she reimbursed these amounts, nor did she offer an explanation about the reimbursement. I find that she has not met the burden of proving that she "reimbursed" this \$100, after the respondent paid it to her.
20. In summary, I find that the applicant loaned the respondent \$1,000. I find that the respondent repaid \$965.
21. I order that the respondent pay the applicant the remaining \$35, within 30 days of this decision, as well as *Court Order Interest Act* (COIA) interest from March 21, 2017 to present. I do not accept the applicant's argument that 2% monthly interest ought to apply. She did not prove that that parties agreed on interest at the time of the loan.
22. 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. As the applicant was partly successful, I order the respondent to pay 50% of her tribunal fees, being \$62.50.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$98.40, broken down as follows:
 - a. \$35 as the remaining repayment of the loan,
 - b. \$0.90 in pre-judgment interest under the *Court Order Interest Act*, calculated from the March 21, 2017 date of the loan to the date of this decision, and
 - c. \$62.50 for 50% of the \$125 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.
26. 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