



Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-003926

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shahabfar v. Khaleghi Saraghein*, 2019 BCCRT 594

B E T W E E N :

Alireza Shahabfar

APPLICANT

A N D :

Masoumeh Khaleghi Saraghein

RESPONDENT

AND:

Alireza Shahabfar

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about money and personal property. The applicant, Alireza Shahabfar, says that the respondent, Masoumeh Khaleghi Saraghein, failed to pay her share of expenses and return items of his property after the breakdown of their relationship of approximately 4 months duration. He seeks an order that the respondent repay him \$2,687.28 and either return his property or pay him \$1,818.28. The respondent denies that she owes the applicant money or that she has any of his personal property.
2. By counterclaim, the respondent seeks \$1,500 she says the applicant borrowed from her, and \$2,893.47 for items she says the applicant removed from her apartment and his share of living expenses.
3. The parties are 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that

I am properly able to assess and weigh the evidence and submissions before me. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 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

8. In her submissions to the tribunal in response to the applicant's claim, the respondent stated that she did not want monetary reimbursement from the applicant and simply wanted the matter to be resolved. However, she did not withdraw her claims. In her counterclaim, she argued the applicant should pay \$2,893.47 and that she had wanted the applicant to pay her back \$1,500.00. Accordingly, I will consider all of the issues identified by the parties.
9. The issue in this dispute are:
 - a. whether the respondent must pay the applicant \$2,687.28;
 - b. whether the respondent must return the applicant's personal property or pay him \$1,818.28;

- c. whether the applicant must pay the respondent \$1,500; and
- d. whether the applicant must reimburse the applicant \$2,893.47 for items taken from her apartment and his share of living expenses.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, an applicant (either by claim or counterclaim) bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence 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.
11. The parties began dating in January of 2018. During their relationship, they spent time together at each other's homes, exchanged gifts, took a trip to Mexico, and made a joint offer to purchase a condominium. When the relationship ended in late April or early May of 2018, the parties agreed that the respondent's name would be removed from the condominium contract.
12. The applicant says that he purchased items including luggage, a vacuum and dishes that he left in the respondent's apartment to use while he was there. He states that the respondent has refused to return his belongings to him. The respondent also says he paid for restaurant meals, a travel package and additional excursions for the Mexico trip, and souvenirs. According to the applicant, the respondent committed to paying her share of these items but failed to do so. He also says that the respondent refused to return items of jewelry the applicant gave her as gifts.
13. The respondent denies that she has any of the applicant's belongings and says that she returned all of his property to him. The respondent says that the applicant gave her the vacuum and other items as gifts, and that she gave him various gifts and paid for restaurant meals during the course of the relationship. She states that she did not agree to pay a share of the trip to Mexico as the applicant insisted upon

paying for it. According to the respondent, she did pay about \$560 USD for an excursion and other expenses during the trip.

14. By counterclaim, the respondent says the applicant spent nearly every weekend at her apartment and never contributed to the cost of groceries, rent, gas or utilities. She says the applicant's share of these items amounts to \$2,893.47 and seeks payment of that amount. She also says that the applicant took some of her belongings. The respondent states that she gave the applicant \$1,500 and seeks repayment of that amount.
15. The applicant says the \$1,500 the respondent gave him was the repayment of a loan for a car purchase. He says that he spent time at the respondent's apartment at her invitation, including for 10 days after the respondent sustained an injury and did not want to be alone. He points out that the applicant did not reimburse him for utilities or food for the time she spent at his home. The applicant denies that he owes the respondent any money.
16. The respondent provided screen shots of text messages between the parties in support of her position. However, as the messages are not in English and no translation was provided, I am unable to consider their contents. Given my conclusions below, I find that nothing turns on this.
17. The applicant seeks reimbursement for expenditures he says he made for the respondent's benefit and for items he says she retained without his permission. The applicant provided a detailed list of expenses for parking, restaurants, bars, grocery and retail stores, a travel company, and cash expenses. These expenses are dated between January 21 and April 16, 2018 and total \$4,505.56 after deductions for what the applicant describes as birthday restaurant, birthday gift and excursions.
18. The applicant's listed expenses were incurred in a time frame that corresponds with his relationship with the respondent. The applicant did not provide receipts for the listed expenses or details of what items correlate to each expense. It is not clear to what extent the described purchases relate to the respondent or the personal items

the applicant says he left at her apartment. I find that the applicant has not met his evidentiary burden in this regard.

19. The evidence does not support that the parties had an agreement that the costs of meals or outings would be split equally or that any costs incurred by the applicant would be reimbursed upon the end of the relationship. I find that the respondent is not responsible to reimburse the applicant for any portion of these types of expenses.
20. The parties have differing views as to whether some of the items purchased by the applicant (such as the vacuum) were for the applicant's use or were gifts to the respondents. As discussed in *Lundy v. Lundy*, 2010 BCSC 1004 at paragraph 20, in order for a gift to be established, there must be an intention to donate, an acceptance, and a sufficient act of delivery. The evidence should show that the intention of gift was inconsistent with any other intention or purpose. The burden of proof is on the person alleging the existence of a gift.
21. The applicant delivered various items to the respondent, and she accepted them as though they were gifts. The key element in this case is the applicant's intention. The respondent's evidence is that the items that were gifted to her came wrapped and with flowers and that the applicant purchased the Mexican trip as a gift as she did not want to spend money on a vacation at the time. I find this is more consistent with gifting behavior, and the applicant's admission that he gave gifts to the respondent. I find that the evidence supports that the applicant gave the respondent various items as gifts and does not suggest that these gifts were conditional upon the relationship continuing.
22. The applicant submits that the respondent did not return all of his personal property, while the respondent says that she delivered the applicant's property to his home in Chilliwack. Based on the evidence before me, I find that it is more likely than not that she did so, with the exception of the items that were gifted to her. While the applicant also alleges the respondent should return things he says he gave to her as gifts, I find there is no such obligation.

23. I am satisfied that the applicant has not established, on a balance of probabilities, that the respondent has retained his property or owes him the claimed sums. As such, I dismiss the applicant's claims.
24. Turning to the respondent's counterclaim, she seeks \$2,893.47 in reimbursement for living expenses and the return of the \$1,500 she says she gave to the applicant. The respondent did not provide documentation to support these amounts.
25. I find that there was no agreement to share expenses when either party spent time at the other's home. Based on the evidence before me, I find that the respondent invited the applicant into her home as a guest without any intention that he contribute to the costs. The respondent did not provide details of the items she says the applicant removed from her home or their value. I find that she has not established her claim in this regard. In these circumstances, I find that the applicant has no obligation to pay the \$2,893.47 claimed by the respondent, or any other amount.
26. The respondent states that she gave the applicant \$1,500 for "what he wanted to pay in our relationship". She also states that she gave him this money to help him to buy an apartment and had no expectation of getting paid back. The applicant's banking records suggest that it is more likely than not that he advanced a loan to the respondent which she later repaid.
27. I find that the respondent has not proven that the applicant owes her the sums described, or any other amount. Accordingly, I dismiss her counterclaims.
28. 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. In this case, as both parties were unsuccessful, I dismiss their respective claims for reimbursement of tribunal fees. Neither party made a claim for dispute-related expenses.

ORDER

29. I dismiss the applicant's claims, the respondent's counterclaims, and this dispute.

Lynn Scrivener, Tribunal Member