



# Civil Resolution Tribunal

Date Issued: June 6, 2019

File: SC-2018-007779

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Syntax Demand Creation Engine Inc. v. Wedman Estates Inc. et al*,  
2019 BCCRT 688

B E T W E E N :

Syntax Demand Creation Engine Inc.

**APPLICANT**

A N D :

Wedman Estates Inc. and First West Credit Union doing business as  
Envision Financial

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This is a dispute about overpayment of rent. The applicant, Syntax Demand Creation Engine Inc., rented commercial space from the respondent, Wedman Estates Inc. (Wedman Estates). The applicant claims that Wedman Estates

continued to collect rent after the tenancy ended using a pre-authorized debit agreement (PAD agreement). Wedman Estates' bank account where the rent payments were deposited was at the respondent credit union, First West Credit Union doing business as Envision Financial (Envision). The applicant claims a total of \$2,730 in overpayments from the respondents.

2. The applicant also claims \$300 from Wedman Estates for heating and cooling costs.
3. The applicant is represented by its president. Envision is represented by an employee. As discussed in more detail below, Wedman Estates did not take part in this dispute.

## **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 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. The issues in this dispute are:
  - a. Is Wedman Estates in default of the tribunal proceedings? If so, what remedy is appropriate?
  - b. Is Envision liable for the overpayments that came out of the applicant's account?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. This is a dispute in which the parties provided very little evidence. The applicant leased commercial space from Wedman Estates until January 2017 for \$1,365 per month. The applicant paid rent pursuant to a PAD agreement that the applicant set up with his bank. The applicant provided the PAD agreement to Envision, where Wedman Estates had an account.
11. On January 12, 2017, the applicant emailed Wedman Estates and asked them to instruct Envision to cancel the PAD agreement because the tenancy had ended. The applicant says that prior to this email, its president had gone to an Envision branch to have the PAD agreement stopped, but an Envision employee told him that the applicant could not cancel the PAD agreement. As Envision's client, Wedman Estates had to do it.

12. On January 12, 2017, Wedman Estates agreed to phone Envision “right away”, but apparently it did not do so because the PAD agreement was not cancelled.
13. Even though the PAD agreement was not cancelled at that time, no payments were withdrawn under the PAD agreement between January and July 2017. It appears that the applicant had put a stop payment on the account, which expired after July 2017, although the evidence is not entirely clear. In any event, monthly rent of \$1,365 was withdrawn from the applicant’s account from August through November 2017, for a total of \$6,825. Apparently, the applicant only realized that rent payments were coming out of his account in November 2017.
14. The applicant made a claim through his bank for recovery of the overpayments. The applicant’s bank was able to recover \$4,905 of the overpayments for September, October and November. The applicant says that its bank could not recover the rent overpayments from July or August 2017 because the bank could only go back 3 months using their claim process. Therefore, the applicant says that it is still owed \$2,730.
15. On November 22, 2017, the applicant sent an email to Wedman Estates about the overpayments. Wedman Estates did not dispute the debt and told the applicant that Envision had told it that the applicant needed to cancel the PAD agreement, not the other way around.
16. At this point, the applicant involved Envision. The applicant’s president had a meeting with an Envision employee on November 24, 2017. At the meeting, the Envision employee confirmed that Wedman Estates had to cancel the PAD agreement.
17. After a series of emails in which the applicant and Wedman Estates accused the other of failing to cancel the PAD agreement, Envision cancelled the PAD agreement after speaking to one of the principals of Wedman Estates. However, Wedman Estates refused to repay the remaining overpayments.

***Is Wedman Estates in default? If so, what remedy is appropriate?***

18. The tribunal issued the applicant's Dispute Notice on October 23, 2018.
19. The applicant attempted to provide a copy of the Dispute Notice to Wedman Estates' registered office by registered mail, courier, process server and in person, with no success. On December 5, 2018, the applicant requested directions on how to provide notice, which the tribunal did. The applicant has certified that it provided notice in accordance with the tribunal's directions on December 18, 2018.
20. Tribunal rule 4.1(1) says that if a respondent fails to respond to a properly delivered Dispute Notice, they are in default. Having reviewed the evidence, I am satisfied that the applicant provided proper notice to Wedman Estates and that Wedman Estates has failed to respond in time. Accordingly, I find that Wedman Estates is in default.
21. Under tribunal rule 4.3(2), when a respondent is in default for a debt claim, the tribunal will order the amount claimed. I find that the applicant's \$2,730 claim for overpayment of rent is a debt claim. Accordingly, I order Wedman Estates to pay the applicant \$2,730.
22. Under tribunal rule 4.3(3), when a respondent is in default for a non-debt claim, the tribunal will determine the amount the applicant is entitled to based on the evidence provided. The applicant's only statement about the remaining \$300 claim is in the Dispute Notice, which says that Wedman Estates was "to seal-off the hole in the office wall which is hidden above the ceiling tiles – I was paying to heat/cool another tenant's unit and the parking garage". I find that this explanation falls far short of proving an entitlement to payment. I dismiss the applicant's \$300 claim.
23. The applicant is also entitled to prejudgment interest under the *Court Order Interest Act* (COIA). I have calculated interest based on separate debts of \$1,365 arising on July 1, 2017 and August 1, 2017, respectively, which totals \$67.57.

***Is Envision liable for the payments that came out of the account?***

24. The applicant argues that because Envision continued taking money from its account after being instructed not to, it is liable for the overpayments. The applicant says that Envision committed theft and fraud on behalf of its client. The applicant says that Envision breached Payments Canada rules but does not explain this submission. That said, I have reviewed Rule H1 of the Payments Canada rules, which relates to PAD agreements, and I do not agree that it places any obligation on Envision to accept instructions from the applicant as the payor under the PAD agreement.
25. The applicant is not Envision's client. Envision says that it tried to work with both parties to facilitate the cancellation of the PAD agreement. However, Envision says that it could not accept instructions from the applicant to cancel the PAD agreement. The instructions had to come from its client.
26. I find that the applicant has not established that Envision had any legal obligation to cancel the PAD agreement unless instructed to do so by its client. I agree with Envision's submission that its role was to fulfill its client's instructions to facilitate the transfer of funds and nothing more. Just because Wedman Estates used a bank account with Envision to breach a contract does not mean that Envision is liable for the resulting debt.
27. For these reasons, I dismiss the applicant's claims against Envision.
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. The applicant has been successful against Wedman Estates so I find the applicant is entitled to reimbursement of \$175 in tribunal fees and \$159 in dispute-related expenses from Wedman Estates, which includes the cost of registered mail, a courier, and a process server.
29. Envision was successful but did not claim any dispute-related expenses.

## ORDERS

30. Within 14 days of the date of this order, I order Wedman Estates to pay the applicant a total of \$3,131.57, broken down as follows:
- a. \$2,730 in debt
  - b. \$67.57 in pre-judgment interest, and
  - c. \$334 for \$175 in tribunal fees and \$159 in dispute-related expenses.
31. The applicant's remaining claims are dismissed.
32. The applicant is entitled to post-judgment interest under the COIA, as applicable.
33. 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.
34. 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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Eric Regehr, Tribunal Member