



Civil Resolution Tribunal

Date Issued: August 14, 2019

File: SC-2019-002881

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carter v. Smith*, 2019 BCCRT 969

BETWEEN:

ROSE CARTER

APPLICANT

AND:

ROGER SMITH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Rose Carter, says she loaned the respondent, Roger Smith, \$1,000. She submits that the loan is past due and unpaid. The respondent disagrees and says the \$1,000 was payment for house-sitting services.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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* (CRTA). 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.
4. The parties dispute whether the \$1,000 was a loan. 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, both sides have called 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.
5. 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.
6. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

7. The issue in this dispute is whether the respondent owes the applicant \$1,000 for repayment of a loan.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The applicant says that the respondent was previously a tenant that rented the upper main floor of her home. In September 2015, she says the respondent asked for a loan of \$1,000, in order to pay an outstanding phone bill and quality for a business loan.
10. The parties did not write out the terms of their agreement. I place significant weight upon a copy of a cheque dated September 24, 2015. The cheque is drawn from the applicant's personal account and made payable to the respondent for \$1,000. It also states in handwriting, "loan to be repaid in full on or before April 15, 2017".
11. Given the notation on the applicant's cheque, I find it more likely than not that the applicant loaned the respondent \$1,000 on September 24, 2015. I also find the parties agreed that this amount became due on April 15, 2017.
12. The other evidence before me is consistent with the claimed debt. The applicant sent a demand letter on October 23, 2017. In a November 18, 2017 email, the respondent acknowledged that he owed \$1,000, and said he intended to repay the applicant once his damage deposit was returned. In a December 2017 letter the respondent repeated that he would "honour this debt", but proposed, among other things, repaying in instalments of \$40 per month. The applicant says, and I find, that she refused.

13. I reject the respondent's submission that the loan was for house sitting services. This submission is contradicted by his own written words that he would "honour this debt".
14. On balance, I find the applicant is entitled to the claimed amount of \$1,000. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from the date of April 15, 2017. I find that date to be appropriate as the loan was due in full on that date.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

15. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.
16. The applicant was successful in this dispute. I therefore award the applicant \$125 for reimbursement of tribunal fees. The applicant did not claim for dispute related-expenses.

ORDERS

17. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,155.34, broken down as follows:
 - a. \$1,000.00 in debt,
 - b. \$30.34 in pre-judgment interest under the COIA from April 15, 2017, and
 - c. \$125.00 as reimbursement of tribunal fees.
18. The applicant is entitled to post-judgment interest under the COIA.
19. Under section 48 of the CRTA, 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.

20. Under section 58.1 of the CRTA, 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.

David Jiang, Tribunal Member