



# Civil Resolution Tribunal

Date Issued: April 27, 2020

File: SC-2019-008762

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Easyfinancial Services Inc. v. Bunke*, 2020 BCCRT 454

BETWEEN:

EASYFINANCIAL SERVICES INC.

**APPLICANT**

AND:

MIKAL BUNKE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. This small claims dispute is about a loan. The applicant, Easyfinancial Services Inc., loaned money to the respondent, Mikal Bunke, but says he stopped paying on

August 16, 2019 with \$2,987.66 outstanding. The applicant requests this amount and also requests \$100.00 in non-sufficient funds (NSF) charges for a total of \$3,087.66. The applicant is represented by an organizational contact.

2. The respondent says that the applicant attempted to take money out of his account before it was due. The respondent says he closed his account because of the applicant's behavior and that he will not pay the loan until the applicant cancels the NSF charges. The respondent represents herself.

## **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 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 "it said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 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 therefore decided to hear this dispute through written submissions.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
7. Another tribunal member previously determined that although the respondent had not participated after filing his Dispute Response, he was still compliant. The tribunal member noted that the respondent stated that in his opinion the tribunal did not have jurisdiction over the matter and that he was planning on taking it to Federal Court. After that decision, the respondent did not make any arguments about the tribunal having jurisdiction. As noted, the tribunal has jurisdiction over small claims disputes under \$5,000. The respondent has provided no evidence about why the tribunal does not have jurisdiction. Therefore, based on the evidence, I find that the tribunal does have jurisdiction to decide this dispute.

## **ISSUE**

8. The issue in this dispute is whether either party breached the terms of the loan agreement and, if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant must prove its claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. The applicant has provided the personal loan agreement which shows that the respondent took out a \$3,600.00 loan on May 30, 2019. The respondent agreed to pay semi-monthly payments of \$189.75 with the first payment being due the 15<sup>th</sup> of

the month and the last payment due on May 31, 2020. The agreement noted that a \$50.00 NSF charge would be applied if any payment was missed. The agreement does not specifically state that the payments were due on the 15<sup>th</sup> and the last day of every month but it says semi-monthly. Based on the fact the last payment was due on May 31, 2020, I find that this means the second bi-monthly payment must be made by the last day of the month. The interest rate was 46.96%. The respondent initialed all clauses and signed the agreement.

11. The loan agreement allowed the applicant to take bi-monthly payments directly from the respondent's account. As noted above, the respondent says that the applicant tried to take the payments out early. The applicant provided a summary of the loan payments. The summary shows that interest was first calculated on June 14, 2019 and it appears that the applicant took out the payment on June 15, 2019. There was no NSF charge applied. I find this to mean that this payment was made on time because it was paid by the 15<sup>th</sup>. The applicant also took out a payment on June 30, 2019. There is another payment on July 15, 2019. Then on July 31, 2019 there is an NSF charge. On August 3, 2019, it appears that the respondent made the loan payment in cash.
12. The respondent says that he renegotiated the payment dates at this point but there is no evidence of this. Based on the summary provided by the applicant, I do not accept the respondent's submission that the applicant attempted to take the July 31, 2019 payment out early. Therefore, I find the applicant was entitled to charge the respondent this \$50 NSF fee. However, I also note that the summary shows that the \$50 NSF charge was added onto the balance on August 3, 2019 and therefore the applicant is not entitled to charge that amount again on this dispute.
13. The applicant then debited the respondent's regular payment on August 16, 2019. The summary shows that on August 30, 2019 the applicant attempted to take the money out of the respondent's account, but the debit came back NSF. The applicant has not explained why it tried to take the money out of the respondent's account before the last day of the month. The applicant then charged the

respondent another \$50 NSF fee. The applicant has not proved why it was entitled to do so. Therefore, I find it is not entitled to the \$50 NSF fee for this payment.

14. When the applicant tried to take out the mid-September payment on September 16, 2019, it learned that the respondent had closed his account. The outstanding amount was \$2,897.66. The respondent says he changed the payment days with the applicant, but it still attempted to take the money out of his account early. He states that the applicant did this as a punishment for not taking out loan insurance.
15. The question remains whether the respondent was entitled to close his account and stop paying the loan altogether because the applicant attempted to take out his loan payment early. I find he was not. The respondent had the right to demand that the applicant not charge inappropriate NSF charges. He has provided no evidence that he discussed this with the applicant or took any steps to stop the applicant from doing so. He also provided no evidence showing that he had no other option but to close his account. The respondent entered into a loan agreement and is still responsible for paying the outstanding amount. I note that the respondent also acknowledged that he owes the outstanding balance.

## **TRIBUNAL FEES, INTEREST AND EXPENSES**

16. Therefore, the applicant is entitled to the \$2,987.66 outstanding balance, this includes interest up until the date the loan was to be paid in full on May 31, 2020. It also includes the one allowable NSF charge. I deny the applicant's claim for the second NSF charge. The agreement says that if a payment is not made then the entire amount plus interest becomes due at that time. Additional interest accrued as of the date the respondent stopped making payments, which was August 31, 2019. At the contractual interest rate of 46.96%, this amounts to \$926.37.
17. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Here the applicant was substantially successful, so it is

entitled to reimbursement of its \$175 tribunal fees. There was no request for expenses.

## **ORDERS**

18. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$4,089.03, broken down as follows:
  - a. \$2,987.66 in debt,
  - b. \$926.37 in pre-judgement contractual interest, and
  - c. \$175.00 in tribunal fees.
19. I dismiss the applicant's claim for \$100 in NSF charges as one was already included in the amount owing and the other is not allowable.
20. The applicant is also entitled to post-judgement interest as applicable.
21. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

22. 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.

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Kathleen Mell, Tribunal Member