



Civil Resolution Tribunal

Date Issued: May 11, 2020

File: SC-2019-010890

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Larson v. Gendi*, 2020 BCCRT 512

BETWEEN:

ANDREA LARSON

APPLICANT

AND:

MARY AMINA ANITA EL GENDI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about an agreement to share medical office overhead.
2. The applicant Andrea Larson says the parties agreed that the respondent Mary Amina Anita El Gendi would pay monthly office overhead, calculated at 40% of

actual overhead expenses. The applicant says the respondent failed to pay a \$1,156.46 balance for overhead due for October and November 2019.

3. The respondent says that she only agreed to pay up to \$1,400 per month for October and November 2019, based on a 30% calculation of actual expenses. The respondent says deductions should be made: \$200 for an office chair she says the applicant damaged and took from her, and \$336 in repairs for vandalism damage to her examination table.
4. The respondent says she does not owe any more overhead and asks me to dismiss the dispute.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 "she 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.

8. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
9. 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.
10. 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.

ISSUE

11. The issue in this dispute is to what extent, if any, the respondent owes the applicant the claimed \$1,156.46 as her share of office overhead expenses?

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
13. In late August, the respondent texted the applicant to discuss office share details. The respondent wrote, in part, "I am happy to pay As much as you think would be appropriate for the usage of the office." (quote reproduced as written) I find that this statement was made during a negotiation and was not the parties' final agreement about overhead expense sharing.
14. While the respondent submits that the parties' agreement was that she pay 30% overhead, on September 11, 2019, the respondent texted the applicant to say that

she hoped they could agree on 40% “of rent/ overhead” and that 40% was her preferred option. I find this consistent with the applicant’s position that the respondent agreed to pay 40% overhead, and with a statement from EB, another doctor working at the office, who overheard the respondent agreeing to pay an overhead percentage instead of a flat fee. I find that the respondent agreed to pay 40% of the office overhead starting in October.

15. On October 11, 2019, the applicant emailed the respondent acknowledging that the respondent wanted to cap her overhead payment at \$1,400 a month. The applicant proposed that \$1,600 per month would be more appropriate, given staff time. The respondent replied indicating that an extra staff person was not necessary. I find that the parties did not vary their agreement which was that respondent would pay 40% overhead, because they could not agree on a flat rate amount or cap.
16. Part way through November, the respondent left the office because the share arrangement was not working well for either party.
17. The applicant prepared an invoice for October and November 2019 itemizing office expenses. The respondent’s 40% overhead is calculated as \$2,968.46 on the invoice.
18. The respondent paid the applicant \$1,812. This dispute is about the remaining \$1,156.46 the applicant says the respondent owes for overhead under the invoice.
19. The invoice charges \$1,746.15 for October. I find that the October figure is inaccurate because it is calculated using an average of expenses for September, October and November, and then taking 40%. I have found that the overhead agreement was that the respondent would pay 40% of actual monthly overhead expenses. Based on actual October expenses, I find that the overhead charge should be \$1,652.52.
20. The invoice charges \$1,222.31 for November, because the overhead is pro-rated for the 21 days the respondent was still using the office. I find that the total overhead payable for October and November combined, before the deductions

considered below, is \$1,062.83. I calculate this by taking \$2,874.83, the amount the respondent owed based on 40% of actual overhead for October and November, and subtracting the respondent's payment of \$1,812.

21. The respondent submits that I should deduct \$200 from the overhead owing for a black task chair that was not returned to her. I find that the applicant attempted to return a chair, but the respondent rejected it either because she thought it was damaged or because it was a similar, but not identical, chair. While I cannot determine which of the three similar chairs at the applicant's office was originally purchased by the respondent, I find that the disputed chair remains there.
22. Contrary to the respondent's assertion that the applicant's medical office assistant damaged the chair by putting her feet up on it, I find that the applicant did not intentionally damage the chair. I find the damaged chair's appearance, with vinyl flaking off the seat, is more consistent with wear and tear.
23. Because the chair remains at the applicant's office, I find that the respondent is entitled to one used office chair. Based on the invoices filed in evidence, I find that the new value of such a chair is about \$120. On a judgment basis, I deduct \$60 from the respondent's overhead payable, being 50% of the new chair price.
24. The respondent also submits that I should deduct \$336 from her overhead owing because she paid to repair an examination table damaged by vandalism. The respondent submits that the repair should have been covered by the applicant's insurance. I find that the applicant did not have insurance for the damaged examination table at the time.
25. The parties agree that they both used the examination table when seeing patients. I find that the \$336 repair fee should have been a shared office overhead expense, with only 40% payable by the respondent. As a result, I deduct 60% of \$336 (\$201.60) from the remaining overhead payable by the respondent.
26. Taking the \$1,062.83 and subtracting \$60 for the chair and \$201.60 for the examination table repair, I find that the respondent must pay the applicant \$921.23.

27. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$921.23 from November 30, 2019, when I find payment was due, to the date of this decision. This equals \$8.07.
28. 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. I see no reason in this case not to follow that general rule. I order the respondent to pay the applicant \$125 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,054.30, broken down as follows:
- a. \$921.23 in debt, as the balance owing for overhead expenses,
 - b. \$8.07 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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.

32. 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.

Julie K. Gibson, Tribunal Member