



# Civil Resolution Tribunal

Date Issued: May 25, 2020

File: SC-2020-000335

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tryssenaar v. Lee*, 2020 BCCRT 566

BETWEEN:

ANDREW TRYSSENAAR

**APPLICANT**

AND:

KATHERINE LEE

**RESPONDENT**

AND:

ANDREW TRYSSENAAR

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. This is a dispute about division of shared items and household expenses following a relationship breakdown.
2. The applicant, Andrew Tryssenaar, says the respondent, Katherine Lee, owes him \$3,409 for his half of a car they purchased together and \$320 for his share of the damage deposit paid for the apartment they lived in while together.
3. Ms. Lee disagrees with Mr. Tryssenaar's valuation of the car and that the security deposit should be reimbursed. By counterclaim, Ms. Lee says there should be a set-off of amounts Mr. Tryssenaar owes her for an allegedly misappropriated rent cheque, equalization of rent payments, cell phone payments, car insurance and tenant insurance costs, which she says total over \$5,000. In all, Ms. Lee says that Mr. Tryssenaar owes her more than she owes him. Ms. Lee also seeks the return of a cell phone and keys that belong to her. Mr. Tryssenaar says the household expenses were shared and that he is not responsible for the cell phone payments.
4. The parties are both self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. 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 proceedings 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessary.

7. 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.
8. 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.
9. Ms. Lee's Dispute Notice included requests for a "no contact" order to be made against Mr. Tryssenaar and for an order preventing him from bringing further claims against her. I find that these amount to requests for injunctive relief which is outside the tribunal's jurisdiction under section 118 of the CRTA. For this reason, I dismiss Ms. Lee's requests for a no contact order and an order preventing Mr. Tryssenaar from bringing further claims.
10. The uncontested evidence is that the parties did not live together for at least 2 years, and so they do not meet the definition of spouses in the *Family Law Act*. I find that the *Family Law Act* does not apply to this dispute. As for the damage deposit claim, I also note the *Residential Tenancy Act* provisions do not apply on the basis that the Residential Tenancy Branch refuses jurisdiction over "roommate disputes", such as this one. Both parties were tenants on the lease with the landlord. I find the tribunal has jurisdiction over the parties' respective claims.

11. The tribunal's monetary limit in small claims disputes is currently \$5,000. This means that Ms. Lee's proven damages must total \$5,000 or less. By proceeding with this tribunal dispute, I find Ms. Lee has abandoned her claim in excess of \$5,000.

## **ISSUES**

12. The issues in this dispute are:

- a. How much Ms. Lee owes Mr. Tryssenaar to buy out his share of their vehicle,
- b. Whether Ms. Lee should pay Mr. Tryssenaar \$320 for reimbursement of his share of the damage deposit,
- c. Whether Mr. Tryssenaar owes Ms. Lee for a misappropriated rent cheque, his share of the last month of rent, cell phone payments, car insurance costs and tenant insurance costs, and
- d. Whether Mr. Tryssenaar must return any items to Ms. Lee.

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, Mr. Tryssenaar bears the burden of proving his claim on a balance of probabilities. In her counterclaim, Ms. Lee bears the same burden, although I discuss the impact of the law of gifts below. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

14. As referenced above, the parties were in a romantic relationship and lived in a rented apartment together from April 2019 to October 2019. It is undisputed that their relationship ended, and Mr. Tryssenaar moved out of their apartment on October 28, 2019. In December 2019, Mr. Tryssenaar was removed from the lease with their landlord.

15. In November 2018, before living together, the parties each paid half for the purchase a 2009 Toyota Corolla (car) and shared the use of and some expenses for the car during their relationship. Ms. Lee has maintained sole possession and use of the car since the relationship ended and intends to keep it.
16. Ms. Lee agrees that some amount is owed to Mr. Tryssenaar for the car but argues that because she paid for several of the larger “shared amenities” during their relationship, Mr. Tryssenaar owes her money.
17. I turn now to each of the items the parties claim is at issue.

### ***The car***

18. The parties bought the car on November 24, 2018 for \$8,849.99 and they each paid half. The parties agree that Ms. Lee will keep the car and buy out Mr. Tryssenaar’s share.
19. Mr. Tryssenaar says the car’s current value is \$6,818, and that Ms. Lee owes him \$3,409 for his half. He submitted information from AutoTrader, Kelly Blue Book, Canadian Black Book, and private and dealership advertisements for sales of similar vehicles in support of his valuation. The range of values from these sources is between \$5,278 and \$7,350. He argues that based on the kilometres and minor cosmetic damage on the car, the higher end of the range is appropriate.
20. Ms. Lee submits that the car’s total value is \$2,521, based on the average of two car dealership appraisals. One of the appraisals did not involve an assessment or inspection of the actual car. The other appraisal considered the cost of several items of required regular maintenance that Mr. Tryssenaar is no longer responsible for. I find that both dealership appraisals underestimate the car’s value because they reflect the estimated trade-in price, which is not representative of the car’s market value. Therefore, I place little weight on the dealership appraisals.
21. Considering all the information provided from the different sources, on a judgment basis I find that an appropriate valuation of the car at the time of the relationship

breakup is \$6,000. Therefore, I order Ms. Lee to pay Mr. Tryssenaar \$3,000 for his share of the car.

22. Ms. Lee says that Mr. Tryssenaar has not returned his car key to her. Given that it has been agreed that Ms. Lee will keep the car, I find that the key in Mr. Tryssenaar's possession is Ms. Lee's property and I order that Mr. Tryssenaar return his car key to Ms. Lee.

### ***Damage deposit***

23. Mr. Tryssenaar says that Ms. Lee should pay him \$320 for his half of the damage deposit because he is no longer on the lease and the landlord will return the entire damage deposit to Ms. Lee when she moves out.
24. It is undisputed that Mr. Tryssenaar paid \$320 for half of the damage deposit. Ms. Lee argues there is no guarantee that the full damage deposit will be refunded to her when she moves out. However, I find there is no evidence to suggest there was any damage when Mr. Tryssenaar moved out, and it is speculative that the full amount will not be returned to Ms. Lee when she moves out. Further, the apartment's condition when Ms. Lee moves out is now within her full control. Therefore, I find that she must reimburse Mr. Tryssenaar \$320 for his share of the damage deposit.

### ***Cell phone***

25. Ms. Lee says that in August 2019 she allowed Mr. Tryssenaar to use her credit card to buy his cell phone and its monthly contract. The contract is in Ms. Lee's name, but Mr. Tryssenaar has the phone. Since their breakup, Ms. Lee continues to receive monthly bills of \$73.10 for the phone which she is contractually obligated to pay even though she disabled the phone in December 2019. Ms. Lee seeks \$162.39 for the phone purchase in August 2019, \$165.67 for the start-up fees and first bill, \$438.60 for six months of the monthly bills since their breakup, and \$637.50 which is the buyout fee for the phone contract. Ms. Lee also seeks an order that Mr. Tryssenaar return the phone to her.

26. I infer from Mr. Tryssenaar's submissions that he believes Ms. Lee providing him with use of the phone and paying the charges associated with its use were a gift. Mr. Tryssenaar says that he had a monthly "pay as you go" phone and did not need a new phone, but Ms. Lee had been trying to persuade him to get one. He says Ms. Lee just showed up one day and gave him the phone.
27. For there to be a legally effective gift, three things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The context of the parties' romantic relationship is relevant, but not determinative. The evidence needs to show that the intention of paying for the phone's use as a gift was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004). The burden of establishing it was a gift is on the person alleging a gift, in this case, Mr. Tryssenaar (see *Pecore v. Pecore*, 2007 SCC 17).
28. Mr. Tryssenaar denies that he asked Ms. Lee to buy him the phone or to use her credit card to pay the monthly bills. There is no evidence of any discussion or agreement that the use of the phone and payment of its expenses was anything other than a gift, or that Ms. Lee asked Mr. Tryssenaar for any payments towards the phone before their relationship ended. I find it is more likely than not Ms. Lee intended to donate the use of the phone and its expenses to Mr. Tryssenaar as a gift during their relationship, he accepted that gift, and the phone was given to him for his use. Therefore, I dismiss Ms. Lee's claims for an order that Mr. Tryssenaar pay for the phone purchase, start-up fees, and monthly bills while they were together on the basis that they were gifts.
29. However, I find that the phone belongs to Ms. Lee and that her gift was only to pay for Mr. Tryssenaar's use of the phone for the duration of their relationship. Mr. Tryssenaar has kept the phone and yet Ms. Lee remains responsible for the contractual payments of \$73.10 per month. Therefore, I find that Mr. Tryssenaar must compensate Ms. Lee for the monthly phone payments since their breakup, and I order Mr. Tryssenaar to pay Ms. Lee \$438.60 for 6 monthly contract payments.

30. Because Mr. Tryssenaar did not sign the phone purchase contract and Ms. Lee has not proven that Mr. Tryssenaar agreed to be financially responsible for the contractual terms, I dismiss Ms. Lee's claim for the contract buy out amount.
31. Mr. Tryssenaar has said he is prepared to return the phone and, as I have found the phone belongs to Ms. Lee, I order him to do so.

### ***Rent payments***

32. Ms. Lee says that she paid the apartment rent for 4 of the 7 months that the parties lived together. This is supported by Ms. Lee's evidence of bank transfer payments to their landlord. She argues that Mr. Tryssenaar owes her ½ a month's rent, which is \$640, to equalize the rent payments. Mr. Tryssenaar did not disagree that the rent payments were unequal or suggest there was any reason he should not have to pay this amount. I find that the parties agreed they would share the rent payments equally while they were living together. Therefore, I order Mr. Tryssenaar to pay Ms. Lee \$640 to equalize their rent payments.
33. Ms. Lee also claims that she sent Mr. Tryssenaar a cheque for the June 2019 rent payment while she was away for school but that he did not use it to pay rent and she had to pay that month's rent to the landlord directly. She says Mr. Tryssenaar should reimburse her the \$1,280 that he "misappropriated". Ms. Lee's evidence supports that Mr. Tryssenaar deposited this money into his account and Mr. Tryssenaar made no submissions and provided no evidence about Ms. Lee's allegation of the misappropriated money. Based on the weight of the undisputed evidence before me, I find Mr. Tryssenaar did misappropriate this money, and I order him to reimburse Ms. Lee the claimed \$1,280.

### ***Return of the apartment key***

34. Ms. Lee says that Mr. Tryssenaar has not returned the original apartment key and that the landlord wants it returned. The landlord is not a party to this dispute and there is no evidence from the landlord that return of the key is required.



35. However, I can see no reason why the key should not be returned, given that Mr. Tryssenaar no longer lives at the apartment and is not on the lease. Therefore, I order him to return the apartment key to Ms. Lee.

### ***Car insurance and tenant's insurance***

36. Ms. Lee says that she paid for the car insurance and that Mr. Tryssenaar should pay for half of those costs for the time they owned the car together, from December 2018 to October 2019. Ms. Lee says she also paid for tenant insurance and that Mr. Tryssenaar should pay half of that cost for the period they lived together. Ms. Lee provided evidence of the cost of these expenses and that payment for them came from her account. However, there was no evidence or submissions about any agreement with Mr. Tryssenaar that he would pay for half of these expenses.

37. Mr. Tryssenaar says that he and Ms. Lee shared responsibility for the household expenses and that he paid for everyday items such as gas and groceries, while she paid for bills requiring a credit card. It might well be that Ms. Lee contributed more to the payment of household bills and expenses during her relationship with Mr. Tryssenaar, but financial inequality is a feature of many relationships. In this case, there is no evidence of any express or implied agreement between the parties that every household expense, and specifically these claimed expenses, would be split equally between them. Further, there is no evidence that Ms. Lee asked Mr. Tryssenaar for any payment towards these expenses before their relationship ended.

38. I find that Ms. Lee has not proved Mr. Tryssenaar owes half of the car insurance or tenant insurance costs and I dismiss these claims.

39. In summary, I find that Ms. Lee must pay Mr. Tryssenaar \$3,320 for the car and his share of the damage deposit and that Mr. Tryssenaar must pay Ms. Lee \$2,358.60 for cell phone charges, equalization of rent payments, and reimbursement of misappropriated rent money. Therefore, after setting these amounts off each other, Ms. Lee must pay Mr. Tryssenaar \$961.40.

40. Further, Mr. Tryssenaar must return Ms. Lee's car key, apartment key, and cell phone to her. Ms. Lee has indicated that due to the circumstances of their breakup, personal delivery of the items by Mr. Tryssenaar would not be appropriate and I agree. I address the mechanism of delivery in my order below.
41. The *Court Order Interest Act* applies to the tribunal. Mr. Tryssenaar is entitled to pre-judgement interest on the \$961.40 from November 1, 2019, which I find to be the most appropriate date in the circumstances, to the date of the decision. This equals \$10.63.
42. 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 find Mr. Tryssenaar was successful in his claims and Ms. Lee was partially successful in her claims. Each party paid \$125 in tribunal fees and neither claimed any dispute-related expenses. On balance, I find that each party should bear their own cost of their tribunal fees.

## **ORDERS**

43. Within 21 days of the date of this order, I order Ms. Lee to pay Mr. Tryssenaar a total of \$972.03, broken down as follows:
  - a. \$961.40 as payment for Mr. Tryssenaar's share of their car and damage deposit after set-off of amounts owed to Ms. Lee, and
  - b. \$10.63 in pre-judgment interest under the *Court Order Interest Act*.
44. Within 21 days of the date of this order, I order Mr. Tryssenaar to return to Ms. Lee her car key, apartment key, and cell phone via professional courier to Ms. Lee's address on the Dispute Notice, at Mr. Tryssenaar's expense. I order Mr. Tryssenaar to provide Ms. Lee with 3 days written notice of the expected delivery date and time.
45. Mr. Tryssenaar is entitled to post-judgment interest, as applicable.

46. 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 a Ministerial Order 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.
47. 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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Kristin Gardner, Tribunal Member