



# Civil Resolution Tribunal

Date Issued: May 25, 2020

File: SC-2019-005266

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perron v. Dawn*, 2020 BCCRT 570

**BETWEEN:**

ROGER PERRON

**APPLICANT**

**AND:**

VICKY DAWN

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Butch Bagabuyo

## **INTRODUCTION**

1. This dispute is about a campsite use agreement.

2. The applicant, Roger Perron, says the respondent, Vicky Dawn, failed to honour their campsite use agreement.
3. The parties' campsite use agreement was that the applicant would give his rickshaw to the respondent in exchange for campsite accommodation for the 2017 season. The parties agree that the applicant's agreed use of the respondent's campground in 2017 was cut short due to a forest fire.
4. The respondent denies owing the applicant any money because the applicant stayed at the campground until it was closed due to a forest fire evacuation order. Also, she says that the applicant made a lot of mess when he left, causing unnecessary clean up on her part. In addition, she says the applicant's stay, unpaid daily coffee consumption at the campground store, use of electricity, use of additional site parking space for his other trailer, and the clean up after he left is worth more than the value of his rickshaw. As such, the respondent says she does not owe the applicant anything.
5. The applicant seeks \$3,000 for the rickshaw.
6. The parties are all self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided that an oral hearing is not necessary, and I can fairly 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.
11. The applicant originally named a 2nd respondent, Joseph Hamm. However, the applicant did not serve a Dispute Notice on him, so he is not included as a party to this dispute. I have therefore amended the style of cause above to show Vicky Dawn as the sole respondent and have referred to her below as the respondent.

## **ISSUE**

12. The issue in this dispute is whether the respondent breached the parties' trade agreement, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim like this one, the applicant must prove his claim, on a balance of probabilities. The respondent did not submit any documentary evidence in this dispute despite having opportunity to do so. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. The applicant says he needed a place to stay. It is undisputed that the applicant gave his rickshaw to the respondent exchange for free rent for a campground space. The parties' agreement was a verbal one.
15. There is no evidence the parties agreed on the rickshaw's value. There is also no evidence about the length of stay in the campground, the duration of campground availability for 2017, or the cost of daily rental of the campground space. The respondent managed the campground and does not own it.
16. The applicant stayed at the campground from May 14, 2017 until about July 8, 2017, when a forest fire caused the evacuation of the campground resulting in the applicant not having a campground space to rent. The applicant stayed at the designated evacuation centre during the forest fire, where his accommodation and parking were provided for free of charge. The applicant stayed there until the end of the evacuation order.
17. When the evacuation order was lifted around the end of July 2017, the applicant returned to the respondent's campground with his newer 30' gulf stream trailer. The respondent's campground remained closed. So, the applicant parked his trailer just outside of the campground and in front of the campground store, where he connected his trailer for electrical power.

18. On August 7, 2017, the respondent informed the applicant that the campground was not going to reopen for the rest of the season. The applicant inquired about his trade agreement because he believed he still had about 3 months of campground use left from August until the end of October 2017 when the season ended. Their trade agreement was for the rickshaw in exchange for camp rent for the 2017 camping season.
  
19. I considered whether the parties' contract was frustrated because the campground did not reopen after the forest fire. A contract is frustrated if an unforeseeable event occurs that makes it impossible (not merely inconvenient, undesirable, or uncomfortable) to perform the contract as there has been a radical change in the obligation (see, for example, *Wilkie v. Jeong*, 2017 BCSC 2131). I find the permanent closure of the campground frustrated the parties' contract because it was impossible for the respondent to fulfill the contract's terms. The respondent no longer had a campground for the applicant to stay, which I find was an unforeseeable event. I find no evidence that either party contemplated a forest fire or an early campground closure when they entered into their agreement. I also find that there is no evidence that either party had anything to do with the forest fire or the early campground closure.

20. As the tribunal's non-binding decision in *Magoo's Child Care Center LTD v. Ward*, 2018 BCCRT 188 concluded, if a contract is frustrated, neither party is obligated to continue to carry out its terms. The respondent says that she kept the rickshaw rather than returning it to the applicant because the applicant's expenses during his stay exceeded the value of his rickshaw. The respondent seeks to set off the applicant's campground use against the rickshaw (see *Wilson v. Fotsch*, 2010 BCCA 226 for the applicable criteria for an equitable set-off). I find the rickshaw is worth \$2,000, which is the amount the applicant stated on August 17, 2017. I also find the applicant's campground rent and expenses is \$2,000. I find that a set off is appropriate, and the respondent does not owe the applicant anything. Here, I find neither party is obligated to continue to carry out the terms of their agreement, and I find the respondent is not liable to the applicant as a result of the campground closure.
21. Given my conclusions above, I find the applicant's claims must be dismissed.
22. 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. The applicant was unsuccessful, and the respondent has not incurred any tribunal fees, so I decline to make such an order. The respondent did not claim any dispute-related expenses.

## **ORDER**

23. I dismiss the applicant's claims and this dispute.

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Butch Bagabuyo, Tribunal Member