



# Civil Resolution Tribunal

Date Issued: June 25, 2020

File: SC-2020-000294

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marin v. Warden*, 2020 BCCRT 705

BETWEEN:

CINDY MARIN

**APPLICANT**

AND:

IVETA WARDEN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This dispute is about a personal loan. The applicant, Cindy Marin, says the respondent, Iveta Warden, owes her \$3,800.84.

2. Ms. Warden admits she borrowed \$2,175 from Ms. Marin but says she repaid \$1,700. She says the remaining amount Ms. Marin seeks was loaned to Ms. Warden's former husband, JW, who is not named as a party in this dispute.
3. Ms. Marin and Ms. Warden are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
5. The CRT 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 "he said, he 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.
6. Further, bearing in mind the CRT'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.
7. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether Ms. Warden owes Ms. Marin \$3,800.84.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Ms. Marin must prove her case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. Ms. Marin says she loaned money to Ms. Warden on several occasions totaling \$5,840.84. Although she did not provide the dates, Ms. Marin says the loans were as follows:
  - a. \$2,780.71 to recover Ms. Warden's car from impoundment.
  - b. \$600 cash to cover Ms. Warden's rent.
  - c. \$150 for car parts to repair Ms. Warden's car.
  - d. \$135 miscellaneous cash loaned to Ms. Warden.
  - e. \$2,175.13 to pay Ms. Warden's toll debts to ICBC.
12. In her Dispute Notice, Ms. Marin claimed Ms. Warden owed her \$3,800.84. In her evidence Ms. Marin provided a list of amounts she says she loaned to Ms. Warden along with several cash or e-transfer payments she received from Ms. Warden. Again, Ms. Marin did not provide the dates of either the loans or the payments. According to Ms. Marin, Ms. Warden repaid her a total of \$2,165, and Ms. Warden

still owed her \$3,675.84. Ms. Marin did not explain the difference between the debt amount in the Dispute Notice and her evidence. However, I find, based on Ms. Marin's calculations, that her claim is for \$3,675.84, not \$3,800.94.

13. I note that Ms. Marin sent a demand letter to Ms. Warden dated December 3, 2019 seeking \$5,840.84 for the outstanding amount of the loan plus interest. The demand letter did not refer to any of the loan payments or the interest rate. It also did not contain any details about the amounts loaned to Ms. Warden such as when they were made or the amount of each loan. I find the demand letter is of no assistance and I give it no weight.
14. Although Ms. Warden admits Ms. Marin loaned money to recover her car (impound loan), she disputes who Ms. Marin made the impound loan to and the amount of the impound loan. Ms. Warden says the money was loaned to JW, not herself. Ms. Warden says JW used her car as collateral to borrow money from a lender in Surrey. She says her car was seized by the lender when JW did not repay the amount. She says Ms. Marin paid the amount owed so she could get her car back. Ms. Warden says it is JW's responsibility to repay the impound loan to Ms. Marin. Ms. Warden also says the impound loan was made 8 years ago. Neither party stated who Ms. Marin gave the money for the impound loan to.
15. Ms. Marin did not provide the date she made the impound loan to Ms. Warden. She also did not deny that the impound loan was made 8 years ago. In her submissions, Ms. Marin stated "[t]he first cash loans was several years ago, however when I loaned her more money to pay her outstanding toll debts she agreed to pay the outstanding amount from the previous money loaned." Again, Ms. Marin did not provide any dates or amounts. For this reason, I find this statement is vague and give it no weight.
16. In the absence of any evidence to the contrary, I accept Ms. Warden's evidence that the impound loan was made 8 years ago. I will address this issue first.

17. Although Ms. Warden did not refer to the limitation period in her submissions, I infer she intended to raise it as a defense since she pointed out that the event occurred 8 years ago. In this case, I find the version of the *Limitation Act* that was in force before June 1, 2013 (former LA) applies, because if the impound loan was made 8 years ago, then it would have been made before 2013. Section 13 of the CRTA states that the LA applies to the tribunal as if it were a court. Section 3(5) of the former LA provides that in a case like the one before me, the limitation period is 6 years. Section 5 of the former LA states the limitation period can be extended by either paying an amount towards reducing the debt, or by acknowledging the debt in writing before the limitation period expires.
18. In *Kong v. Saunders*, 2014 BCCA 508, the British Columbia Court of Appeal considered the application of the former LA to a loan. Justice Tysoe stated that a loan that was payable on demand was a demand loan. By comparison, a contingent loan was a loan that was payable on a future date or upon the occurrence of a specified event (see *Kong* at paragraph 18). On the evidence before me, I find Ms. Marin did not specify a repayment date for the impound loan to Ms. Warden, and therefore it was a demand loan. Justice Tysoe also stated that the limitation period for a demand loan began to run on the day the demand loan was made (see *Kong* at paragraph 20).
19. I am bound by the court's decision in *Kong* and so I find that the limitation period for the impound loan started to run 8 years ago when it was made. If the money was loaned 8 years ago in 2012, then the 6 year limitation period would apply and the limitation period would have expired in 2018. Ms. Marin filed the Dispute Notice on January 10, 2020. This means the limitation period would have expired before Ms. Marin filed her dispute, unless it was extended. I find there is no evidence the limitation period was extended before the limitation period expired in 2018. Although Ms. Warden made loan payments, there is no evidence of when they were made, or which loan the payments applied to. Ms. Marin says Ms. Warden did not make any attempts to repay her for more than a year. However, I find this statement is vague

and not helpful in determining the last date Ms. Warden made a loan payment. In addition, neither party produced any evidence showing the debt was acknowledged in writing. I find the limitation period has expired and I dismiss Ms. Marin's claim for repayment of the impound loan.

20. Given my finding that the limitation period has expired, I do not need to address the issue of whether the impound loan was made to Ms. Warden or JW. Ms. Warden also disputed the amount of the impound loan. Again, I do not need to address this issue since the limitation period has expired.
21. I will now address the remaining \$3,065.13 that Ms. Marin says she loaned to Ms. Warden. Ms. Warden says she borrowed only \$2,175 from Ms. Marin. This leaves \$885.13 in dispute. Faced with conflicting evidence from the parties about the amounts loaned, it is impossible to know what truly happened. As noted above, the burden is on Ms. Marin to prove on a balance of probabilities that she is entitled to repayment of the remaining \$885.13. I find she has not met that burden.
22. Based on the evidence before me, I find Ms. Marin loaned Ms. Warden \$2,175. Based on Ms. Marin's statement, I find Ms. Warden repaid \$2,165. Ms. Warden says she paid Ms. Marin an additional \$350 on April 21, 2020. I do not accept that Ms. Warden made this payment since Ms. Warden did not provide any proof of how and when the payment was made. I find Ms. Warden owes Ms. Marin the balance of \$10.

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

23. The *Court Order Interest Act* applies to the CRT. Ms. Marin is entitled to pre-judgement interest on the \$10 from December 3, 2019, the date of the demand letter, to the date of this decision. This equals \$0.11.
24. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general

rule. Since Ms. Marin was partially successful, I find she is entitled to reimbursement of \$87.50 in CRT fees. Ms. Marin did not claim dispute-related expenses.

## ORDERS

25. Within 14 days of the date of this order, I order the respondent, Iveta Warden, to pay the applicant, Cindy Marin, a total of \$97.61, broken down as follows:

- a. \$10 as debt repayment,
- b. \$0.11 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50, for CRT fees.

26. The applicant is entitled to post-judgment interest, as applicable.

27. Under section 48 of the CRTA, the CRT 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 CRT's final decision.

28. 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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the

same force and effect as an order of the Provincial Court of British Columbia.

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Rama Sood, Tribunal Member