



# Civil Resolution Tribunal

Date Issued: September 25, 2020

File: SC-2019-006717

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dogs N Roses Truck Inc. v. 7231911 Canada Inc. (dba Digitech Payments)*,  
2020 BCCRT 1085

B E T W E E N :

DOGS N ROSES TRUCK INC.

**APPLICANT**

A N D :

7231911 CANADA INC. (DBA Digitech Payments)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## INTRODUCTION

1. The applicant, Dogs N Roses Truck Inc. (DNR), runs a food truck. It says it “signed up” for payment processing with the respondent, 7231911 Canada Inc. (dba Digitech Payments). DNR says the payment processing software or equipment did

not work as expected. DNR says that Digitech Payments did not fulfill its promise and claims a total of \$887, for the following refunds:

- a. \$113 “to close the agreement and stop monthly payments” on DNR’s account,
  - b. \$200 for payments it made towards “Cash Drawer”,
  - c. \$499 for payments it made towards “Receipt Printer”, and
  - d. \$75 for payments it made towards “Poynt” system, equipment that it allegedly returned to Digitech Payments.
2. Digitech Payments denies DNR’s claims. It says that DNR leased the equipment from Ladco Leasing Canada (Ladco) and not from Digitech Payments. Ladco is not a party to this dispute.
  3. Each party is represented by a company employee or officer.
  4. For the reasons that follow, I dismiss DNR’s claims.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the parties enter into a payment processing contract?
  - b. If so, should I cancel the contract and order that Digitech Payments refund DNR the claimed \$887?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant DNR must prove its claims on a balance of probabilities.
11. Despite carrying the burden of proof, DNR made almost no submissions to support its claim. However, DNR provided some background facts in its application for dispute resolution. DNR stated that it “signed up” with Digitech Payments because it ran a food truck and needed a payment processor to print multiple receipts and tickets. It stated that it first “went with Poynt system” but the equipment was too heavy to hand to clients from the truck window. It said it then signed up for “Talech software” and also changed its hardware to a regular debit machine. It said that Talech also did not function as expected.
12. DNR stated that it contacted Digitech Payments to return “everything”, but Digitech Payments said there was nothing it could do because DNR was “stuck” in the

contract. DNR does not describe the “Cash Drawer” or “Receipt Printer”, despite claiming a refund on them. I find they are likely the payment processor equipment or software described above.

13. DNR submitted no records, such as a delivery receipt, to show that it returned any payment processing equipment to Digitech Payments. I find that DNR has not proven that it returned the equipment to Digitech Payments. More importantly, as I discuss below, I find that DNR likely leased the equipment from Ladco and not from Digitech Payments.
14. The only agreement in evidence is a June 11, 2019 “Non-Cancellable Equipment Lease Agreement” (lease). The lease shows that DNR entered into a 48-month agreement with Ladco to lease credit-card processing equipment. It is undisputed that Digitech Payments supplied the leased equipment to DNR. However, there is no evidence that DNR contracted with or paid Digitech Payments directly for the equipment. I find that all the equipment was likely leased from Ladco.
15. The legal doctrine called “privity of contract” applies here. Privity of contract means that a contract cannot give rights or impose obligations on persons or entities who are not parties to a contract. A lease is a type of contract. Since Digitech Payments was not a party to the lease, I find it had no obligation to DNR under the lease.
16. I find that DNR has not proven that it is entitled to any reimbursement from Digitech Payments. I dismiss DNR’s claims for the requested refunds.
17. DNR also asks that the CRT “close” or cancel the lease. I find I cannot make this declaratory order. First, the CRT has no jurisdiction under the CRT’s small claims jurisdiction to grant this declaratory order. Second, DNR’s lease is with Ladco, who is not a party to this dispute. I cannot make an order against a non-party. So, I decline to grant this requested remedy.
18. 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. DNR was the unsuccessful party and so, I dismiss its

claim for CRT fees. Digitech Payments paid no CRT fees and neither party claimed dispute-related expenses.

## **ORDER**

19. I dismiss DNR's claims and this dispute.

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Trisha Apland, Tribunal Member