



# Civil Resolution Tribunal

Date Issued: September 30, 2020

File: SC-2020-003641

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Klitch v. Forbes*, 2020 BCCRT 1108

BETWEEN:

DAVID KLITCH

**APPLICANT**

AND:

BETTY FORBES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

### INTRODUCTION

1. This dispute is about automatic bank withdrawals. The applicant, David Klitch, says that money was unknowingly withdrawn from his bank account and credited to the respondent, Betty Forbes' electric utility account. Mr. Klitch says this occurred from December 2015 to December 2019. Mr. Klitch says Ms. Forbes owes him a reimbursement of \$2,690.72.

2. Ms. Forbes denies the claim. She says this dispute was filed too late. Ms. Forbes also says Mr. Klitch is responsible for his own bank account.
3. Both parties are 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. Ms. Forbes asks the CRT to anonymize her name in the decision for privacy reasons. She says she works in a sensitive, public capacity and she wants to keep this matter private. The CRT's decisions generally identify the parties because these are considered open proceedings. This is done to provide transparency and integrity in the justice system. The CRT generally anonymizes decisions in certain limited situations such as disputes that involve a vulnerable party, such as a child. The CRT may also anonymize decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names. After consideration, I decline Ms. Forbes' request to anonymize her name. I am not satisfied that Ms. Forbes' privacy concerns are a sufficient basis to remove her name from this decision.
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 Mr. Klitch file this claim too late?
  - b. Was Ms. Forbes unjustly enriched by payments from Mr. Klitch's bank account? If so, how much does she owe him?

## **EVIDENCE AND ANALYSIS**

10. It is undisputed that Mr. Klitch and Ms. Forbes were previously married and an automatic withdrawal was set up on their joint bank account in 2013 to pay the electric utilities for their joint residence.
11. Mr. Klitch says they separated in October 2015 and he left the residence. Mr. Klitch says he removed Ms. Forbes' name from the joint bank account and he became the sole account holder. Mr. Klitch says that he thought he had cancelled the automatic withdrawals relating to Ms. Forbes' property. He says that he did not know that the automatic electric utility payments continued.
12. Mr. Klitch says a total of \$2,690.72 was automatically withdrawn from his bank account without his knowledge for the payment of Ms. Forbes' utility account. Mr. Klitch's bank records show 21 withdrawals of varying amounts between \$7.71 and \$286.27, between December 1, 2015 and September 30, 2019.

13. Mr. Klitch's bank statements describe each withdrawal as "B.C. Hydro-PAP BPY." The bank statements also show withdrawals with the same description in the amount of \$134.89 on July 10, 2018 and \$567.91 on May 17, 2016 from Mr. Klitch's bank account. Mr. Klitch does not claim that these payments were credited to Ms. Forbes' account. I find that the July 10, 2018 withdrawal and the May 17, 2016 withdrawal were related to Mr. Klitch's own utility expenses and are not included in this dispute.

### ***Limitation period***

14. The *Limitation Act* (LA) applies to the CRT. The LA sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. Section 6 of the LA says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is "discovered".

15. Section 8 of the LA says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

16. Mr. Klitch filed his application to the CRT on May 5, 2020, which stopped the limitation period. This means that if any of Mr. Klitch's claims arose before May 5, 2018, he filed it too late and it is out of time for those claims.

17. Mr. Klitch says he did not discover this claim until December 3, 2019. He says he did not notice the payments to Ms. Forbes' account earlier because the payments were small and far apart. Mr. Klitch says that, based on the bank statement's description as a "hydro payment," he assumed the payments were being withdrawn for the utilities for his property. Also, Mr. Klitch says the amounts withdrawn for Mr. Forbes' account generally matched the amount he paid for two months at his property.

18. Mr. Klitch says that he did not discover that the claim until he noticed a withdrawal of \$347 from his bank account on December 3, 2019 shortly after he made a utility payment in November 2019.
19. I find Mr. Klitch's later December 2019 realization does not support a conclusion that the discoverability of his claim was postponed. As noted, under the LA discovery is not just when someone actually knew but includes when they ought to have known about the claim. Mr. Klitch says he was confused about the target of the utility payments. However, while Mr. Klitch says there were 21 withdrawals from his account from December 2015 to October 2019 for Ms. Forbes' utility account, there were only 2 withdrawals during that same time for payments of Mr. Klitch's utilities. I find that Mr. Klitch should have reasonably known that the withdrawals were not being applied to his utility account when so many more withdrawals were being withdrawn from his bank account than expected.
20. In addition, Mr. Klitch says the withdrawals were not noticed because they were small. However, 14 of the disputed withdrawals exceeded \$100 and 2 of the withdrawals were approximately \$280. I find that these charges were substantial enough that Mr. Klitch should realized that there was an issue with his bank account.
21. I find Mr. Klitch has not provided sufficient evidence to establish that he could not reasonably have realized that utility payments were being withdrawn from his bank account since 2015 before coming to his December 2019 realization. So, I find that Mr. Klitch's discovery of his claims was not postponed.
22. Mr. Klitch also says that Ms. Forbes recently acknowledged owing this debt to Mr. Klitch. Section 24 of the LA says that, if before the expiry of the limitation period a person acknowledges liability in respect of the claim, the limitation period is extended and the claim is not considered to have been discovered on any date earlier than the day on which the acknowledgment is made. The acknowledgment must be made in writing. The act or omission on which the claim is based is deemed to have taken place on the day which the acknowledgement is made.

23. The parties exchanged multiple emails between January and March, 2020 discussing the bank withdrawals. In her emails, Ms. Forbes generally said that she would look into the transactions. On March 15, 2020, Ms. Forbes wrote that she did not accept responsibility for Mr. Klitch's bank account transactions but she offered to pay a portion of the disputed charges to settle the matter. Since Ms. Forbes expressly denied responsibility, I find that the March 15, 2020 email was an offer to settle a disputed claim and not an acknowledgement of a debt to Mr. Klitch.
24. Based on the above, I find that Mr. Klitch's 2-year time limit to start this dispute was not extended. So, I find Mr. Klitch's request for reimbursement of utility payments withdrawn from his account before May 5, 2018 are out of time and I dismiss that aspect of his claim.
25. I will now consider Mr. Klitch's request for reimbursement of utility payments withdrawn on or after May 5, 2018, which totals \$783.10,

### ***Unjust enrichment***

26. I find Mr. Klitch's claim is what is referred to at law as a claim for damages in "unjust enrichment".
27. The legal test for unjust enrichment is that the applicant must show that that the respondent was enriched, that the applicant suffered a corresponding deprivation or loss, and there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467).
28. Of the disputed bank withdrawals, 8 transactions totaling \$783.10 occurred since May 5, 2018. Mr. Klitch provided an email from the utility company that says that the utility company applied each of these 8 withdrawals to Ms. Forbes' account. The utility company's email is hearsay. The CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In a previous decision, *Medel v. Grewal*, 2019 BCCRT 596, I accepted similar hearsay evidence from an organization that recorded summaries of reports it generated as part of its standard procedure. I find that this summary of the parties' utility payments is

similar. I find the reasoning in *Medel* applies here, and I find the utility company's email is admissible.

29. Ms. Forbes says that Mr. Klitch is responsible for managing his own bank account. However, she does not dispute receiving the benefit of Mr. Klitch's payments of \$783.10 since May 5, 2018. Based on Mr. Klitch's bank statements and the utility company's email, I find that Ms. Forbes' utility account received payments in the amount of \$783.10 from Mr. Klitch. It is undisputed that these payments were unintentional.
30. I find that Ms. Forbes was enriched by the payments totaling \$783.10 and Mr. Klitch suffered a corresponding loss. Since the payments were accidental, I find that there was no valid basis for this enrichment. So, I find that Ms. Forbes was unjustly enriched in the amount \$783.10. I find that Ms. Forbes owes Mr. Klitch this amount.
31. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Klitch is entitled to pre-judgment interest on \$783.10, from the date each of the payments were withdrawn from his account, to the date of this decision. This totals \$24.55.
32. 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 Mr. Klitch was partially successful, I find that he is entitled to reimbursement of one-half of his paid CRT fees, being \$62.50. Since neither party requested reimbursement of dispute-related expenses, none are ordered.

## **ORDERS**

33. Within 30 days of the date of this order, I order Ms. Forbes to pay Mr. Klitch a total of \$870.15, broken down as follows:

- a. \$783.10 in debt, as reimbursement of bank account withdrawals,
- b. \$24.55 in pre-judgment interest under the COIA, and
- c. \$62.50 in CRT fees.

34. Mr. Klitch is entitled to post-judgment interest, as applicable.
35. 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. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
36. 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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Richard McAndrew, Tribunal Member

