



# Civil Resolution Tribunal

Date Issued: May 6, 2021

File: SC-2020-007618

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *O'Reilly v. Devries*, 2021 BCCRT 477

BETWEEN:

CHRISTINE O'REILLY

**APPLICANT**

AND:

LILA DEVRIES

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about repayment of a loan. The applicant, Christine O'Reilly, loaned money to the respondent, Lila Devries, under a 2012 loan agreement. Mrs. O'Reilly says Ms. Devries stopped making loan payments, and that Ms. Devries said in March 2020 that she had paid off the loan. Mrs. O'Reilly claims that \$4,572.95 is still outstanding and must be repaid.

2. Ms. Devries says the payment records Mrs. O'Reilly kept were confusing and contained many errors, and that Mrs. O'Reilly failed to account for all the payments she made. Ms. Devries says that she owes nothing further, and that Mrs. O'Reilly is out of time to claim further repayment in any event.
3. Each of the parties is self-represented in this dispute.

## **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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the interests of justice.
6. Section 42 of the CRTA says 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.
7. 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

8. The issues in this dispute are:
  - a. Whether Mrs. O'Reilly was out of time to bring this CRT dispute.
  - b. Whether Ms. Devries owes \$4,572.95, or another amount, under the parties' loan agreement.

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mrs. O'Reilly must prove her claims on a balance of probabilities, except where that burden shifts to Ms. Devries as noted below. I have read all the submitted evidence, but I refer only to the relevant evidence as needed to provide context for my decision.
10. Mrs. O'Reilly loaned Ms. Devries a total of \$9,865.62 in a loan agreement the parties signed on July 3, 2012. That amount consisted of \$928 for items previously paid for by Mrs. O'Reilly, plus \$8,937.62 lent from Mrs. O'Reilly's bank line of credit (LOC). The agreement contained a space for a monthly payment amount that was left blank. Other amounts and comments were handwritten on the 1-page agreement, but these annotations were not initialled or acknowledged by the parties. Mrs. O'Reilly says, "All the information was on there and nothing was added, other than the date and my signature, after [Ms. Devries] signed this paper." I find this is incorrect, given the handwriting that referred to events that occurred years later. On balance, I find the parties did not agree to the handwritten additions, and they did not form part of the agreement. One of the notes said that the parties verbally agreed that Ms. Devries would make unspecified minimum monthly payments on the LOC as required by the bank, but I find the evidence does not support such a verbal agreement.
11. So, I find that the parties did not agree to a minimum monthly payment amount on the LOC or on any other loan amount. I also find there was no due date for the loan, which I find was a "demand loan" that would come due when Mrs. O'Reilly demanded repayment in full. On balance, I find that the parties agreed Ms. Devries would pay

the LOC interest charged by the bank on the \$8,937.62 amount only, and did not agree to any other interest charges. I also find that the evidence fails to show Ms. Devries agreed to be charged any other amounts under the agreement, whether for minimum bank payments or other future debts or fees.

12. Mrs. O'Reilly says that she loaned Ms. Devries additional amounts over the next several years, and that she recorded these amounts in her records. However, having reviewed the many submitted records, I find the evidence fails to show that Ms. Devries agreed to borrow any additional amounts under the loan agreement, although I acknowledge that she borrowed and immediately paid back some money for work-related fees under a separate agreement not at issue here. I find Mrs. O'Reilly has only proven that Ms. Devries borrowed a total of \$9,865.62, and that she was required to pay back that amount plus LOC interest on \$8,937.62 of that amount.

***Is Mrs. O'Reilly out of time to bring this CRT dispute?***

13. Ms. Devries submits that Mrs. O'Reilly is out of time to make her claim under the *Limitation Act* (LA). Ms. Devries made payments until at least 2017, and in 2018 the parties corresponded about meeting to discuss the remaining loan balance and future payments. Then, in a March 6, 2019 text message, Ms. Devries denied owing anything further, after which Mrs. O'Reilly sent Ms. Devries a demand letter. I find that under the LA in effect at the time of Mrs. O'Reilly's demand, she had 2 years from that point to begin a claim for the loan balance (LA sections 6 and 14). Mrs. O'Reilly started this CRT dispute in October 2020, which I find was within 2 years of the debt coming due by her demand. So, I find that Mrs. O'Reilly is not out of time to bring this CRT claim.

***Does Ms. Devries owe \$4,572.95 under the loan agreement?***

14. As noted, Mrs. O'Reilly has proven that Ms. Devries borrowed \$9,865.62. Given this, I find that the burden of proof shifts to Ms. Devries, who must prove that she paid back that loan as required (see *Miller v. Hall*, 2020 BCSC 461 at paragraph 50).

15. Ms. Devries says she paid Mrs. O'Reilly over \$15,000, although I find Ms. Devries' submitted records did not show payments totalling that amount, and did not say whether any of those payments were for rent owed to Mrs. O'Reilly under a separate rental agreement.
16. The parties agree that virtually all of the loan and repayment amounts were cash transactions. No receipts were issued, and there are no bank deposit slips, cancelled cheques, or other similar documentation showing what Ms. Devries repaid and when. Mrs. O'Reilly kept records of the amounts repaid by Ms. Devries in handwritten notes on monthly LOC bank statements. Mrs. O'Reilly says she gave copies of these statements to Ms. Devries, but I find the evidence fails to prove exactly when or how often. I find that the evidence does not show that Ms. Devries reviewed and accepted all of the monthly statements. Mrs. Devries says that she reviewed some of Mrs. O'Reilly's records at one point and found them confusing. So, Ms. Devries began keeping her own payment records on a calendar in 2016 and 2017. On balance, I find that Ms. Devries' payment records are reasonably accurate, unlike most of the records kept by Mrs. O'Reilly.
17. Mrs. O'Reilly says she kept "running balances" of the amounts owed, by hand, on the LOC statements. She says the amounts owed included the balance of the LOC itself, plus the other amounts in the July 2012 loan agreement, plus further amounts she allegedly loaned to Ms. Devries later, plus minimum payments she allegedly made on Ms. Devries' behalf, plus monthly rent owed under a separate agreement, plus interest. The monthly LOC statements issued by the bank do not show who made any deposits or withdrawals.
18. Neither party has calculated exact totals for the amount loaned to Ms. Devries, the amount repaid, or the total interest accrued. As noted, Ms. Devries says she found Mrs. O'Reilly's records very confusing and could not understand how Mrs. O'Reilly had arrived at the amounts she said were still owing. I also find that Mrs. O'Reilly's records are confusing, and their reliability is questionable. Mrs. O'Reilly does not deny that there were many errors in her records, but says that she later corrected the errors

in her submitted calculation documents. I find these calculation documents fail to adequately explain how Mrs. O'Reilly determined that there were errors on the LOC statement notes, or how she knew what the correct values should have been.

19. There are at least 77 LOC monthly statements in evidence. Notes have been handwritten on every statement. The notes included various calculations and comments, recorded various payments by Ms. Devries, and assigned portions of these payments to loan payments, to payment of other alleged debts under other agreements, and to rent allegedly owed. There were also comments on other transactions between the parties both related to the loan at issue here and not.
20. Mrs. O'Reilly allegedly made payments to the LOC on many occasions to cover minimum monthly payments she owed the bank, and she added those payments to the running balance she kept separately from the LOC balance. I find the accounting of these payments is confusing, and that they were not always recorded correctly. Mrs. O'Reilly also says that in August 2018 she transferred the amount allegedly owed by Ms. Devries into her mortgage, and that Ms. Devries owes her 3.13% interest on that amount from August 2018 forward. I find the evidence fails to show that Ms. Devries agreed to such an arrangement.
21. Mrs. O'Reilly also says that "there are more payments in my records that [Ms. Devries] made," without explaining what those further payments or records were. She admits that she had to explain her handwritten notes to Ms. Devries because "it was a bit confusing," and that her notes normally corresponded with LOC transactions printed on other, different monthly statements. Mrs. O'Reilly says that "it was difficult to tell which payment was which." Further, she says that, "more notes were written and things were erased and changed" on the monthly LOC statements, without saying by whom or why.
22. I also find that the \$4572.95 claimed by Mrs. O'Reilly is based, at least in part, on estimates and "rough calculations" she made in submitted documents, which I find use assumed amounts and unproven facts. In particular, I find her interest calculations are based on poorly explained estimates and assumptions, do not

adequately explain the interest charged on LOC amounts Mrs. O'Reilly withdrew on her own behalf, and are not reliable. I also find that Mrs. O'Reilly added an additional \$1,100 to the LOC for the \$928 non-LOC amount loaned in July 2012 plus other amounts. I find the evidence fails to show Ms. Devries agreed to pay interest on those amounts, or that she agreed to borrow more than the \$928. I find that Mrs. O'Reilly's balance calculations incorrectly include the additional balance and interest on the \$1,100.

23. Overall, I find that Mrs. O'Reilly's evidence of the loan, repayment, and interest amounts was difficult to follow and was confusing. Her evidence included several dozen pages of undated, cross-referenced, handwritten notes, calculations, and summaries, which I find were internally inconsistent and impossible to reliably reconcile, particularly in light of the admitted errors in the records. I recognize that Mrs. O'Reilly put a great deal of effort into attempting to explain the history of, and fluctuations in, the loan's alleged outstanding value. However, because of the informal nature of the loan and its repayment, I find that her records are incomplete and not entirely accurate.
24. Having said that, I accept Mrs. O'Reilly's submitted records as accurate to the extent they summarize admitted payment amounts made by Ms. Devries until July 2016. According to those summarized records, Ms. Devries paid \$3,925 during that period. Ms. Devries' calendar payment records, which as noted I find are reliable, show that she paid \$7,100 from August 2016 to June 2017. This is broadly consistent with Mrs. O'Reilly's payment summaries from August 2016 onward, which I find show Ms. Devries paid \$9,500 during that time. Weighing the payment evidence, I find that Ms. Devries paid Mrs. O'Reilly a total of at least \$13,425.
25. Although I find she did not accurately calculate an exact total, I find that Mrs. O'Reilly says Ms. Devries owed between \$1,800 and \$2,000 in LOC variable interest. As noted, I find that Mrs. O'Reilly's interest calculations are unreliable. But even if I accepted that Ms. Devries owed \$2,000 in interest, this would bring the total amount she owed to \$11,865.62. This would still be less than the \$13,425 Ms. Devries paid.

On balance, I find Ms. Devries paid at least the total borrowed plus interest, as agreed.

26. Mrs. O'Reilly says that she applied many of Ms. Devries' payments first toward her \$350 monthly rent in 2015, 2016, and 2017, and paid the excess toward the loan. Mrs. O'Reilly says she would not have let Ms. Devries stay with her rent-free, but I find the evidence does not show any other rental terms, including when rent was due, how it was to be paid, or the terms of credit for any missing rent payments. I also find the evidence does not show the parties agreed that rent could be deducted from Ms. Devries' loan repayments, or that rent due under a separate rental agreement would be added as debt under the July 2012 loan. None of Ms. Devries' payment records show that any payment was specifically for rent, and the amounts paid were generally different than the \$350 rent amount. Given the unreliability of Mrs. O'Reilly's records discussed above, and the lack of information about the parties' rental arrangement and rent payment terms, I find the evidence before me fails to show the parties agreed rent could be deducted, and was properly deducted, from Ms. Devries' payments.
27. Having weighed the available evidence, on balance I find that Ms. Devries has paid the outstanding balance on the amounts loaned under the July 2012 agreement and on the LOC. I dismiss Mrs. O'Reilly's claim.

## **CRT FEES AND EXPENSES**

28. 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. Ms. Devries was successful but paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.



## **ORDER**

29. I dismiss Mrs. O'Reilly's claims, and this dispute.

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Chad McCarthy, Tribunal Member