



# Civil Resolution Tribunal

Date Issued: October 18, 2021

File: SC-2021-003324

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Handley v. Suttie*, 2021 BCCRT 1101

BETWEEN:

ALLEN HANDLEY

**APPLICANT**

AND:

AGNES SUTTIE

**RESPONDENT**

AND:

ALLEN HANDLEY

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This is a dispute about the breakdown of a romantic relationship.
2. The applicant, Allen Handley, lived with the respondent, Agnes Suttie, for several months. He claims that after he moved out, he paid Ms. Suttie \$800 as a “settlement”. In exchange, he says that Ms. Suttie agreed to give him all of his belongings back, which he says she never did. He claims a return of that \$800. He also asks for \$1,100 for his share of Magic: The Gathering (MTG) cards he says they purchased jointly that she kept. Finally, he asks for \$7.40 that he says she stole from his change jar, for a total monetary claim of \$1,907.40. He also asks for an order that Ms. Suttie return the rest of his belongings, which he values at \$300.
3. Ms. Suttie says that the \$800 payment was for rent and utilities. She also that the MTG cards she kept were a Christmas gift. She denies that she still has any of his belongings. She asks that I dismiss his claims.
4. In her counterclaim, Ms. Suttie claims \$1,600 in rent and utilities for the first 2 months that Mr. Handley lived with her. It is undisputed that at the time the parties agreed that he would live rent-free for those 2 months, but Ms. Suttie says she did not anticipate how the relationship would end. She also claims \$300 as compensation for her father making 3 separate deliveries to Mr. Handley.
5. Mr. Handley says that Ms. Suttie cannot now go back on their agreement about living rent-free. He also says that he was willing to pick up his belongings from her house, so it was unnecessary for her father to make any deliveries. He asks that I dismiss her claims.
6. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
9. 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.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
11. I note that the BC Supreme Court has exclusive jurisdiction over the division of family property under the *Family Law Act* (FLA). The property division provisions in the FLA only apply to legally married spouses or people who live together in a marriage-like relationship for 2 years or more. Because the parties were not married and only lived together for a few months, I find that the FLA does not apply. So, I find that the CRT has jurisdiction over this dispute.

## **ISSUES**

12. The issues in this dispute are:

- a. Was Mr. Handley's \$800 payment for a settlement, and if so, is he entitled to repayment of the \$800?
- b. Does Ms. Suttie still have any of Mr. Handley's belongings, and if so, is he entitled to their return?
- c. Were any MTG cards gifts to Ms. Suttie, and if not, is he entitled to payment of \$1,110 for his alleged share in them?
- d. Does Mr. Handley have to pay Ms. Suttie for rent and utilities for December 2020 and January 2021?
- e. Does Mr. Handley have to pay Ms. Suttie \$300 because her father delivered Mr. Handley's belongings?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, each party must prove their claims on a balance of probabilities, which means "more likely than not". This means that Mr. Handley must prove that he is entitled to a return of his \$800 payment and that Ms. Suttie still has his belongings. However, under the law of gifts, Ms. Suttie must prove that the MTG cards in question were gifts as she alleges. Ms. Suttie must also prove that she is entitled to \$1,600 in rent and utilities and \$300 for the deliveries.
14. I have read all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision. I note, in particular, that both parties provided evidence about their relationship dynamic, the other party's character and behaviour, and the reasons for their breakup. They both also provided several character witness statements. I find that none of this evidence is relevant to the questions I must answer in this dispute, and I have placed no weight on any of it.

15. The following background facts are undisputed. The parties began dating in the fall of 2020. At the beginning of November 2020, Mr. Handley moved about an hour and a half away from Ms. Suttie to take a new job. By the middle of the month, he decided to go back to his old job and move in with Ms. Suttie. It is unclear exactly when he moved in, but it was sometime in late November or early December. Nothing turns on this. The parties agreed that he would not pay rent to Ms. Suttie for December 2020 and January 2021. On February 1, 2021, he paid \$830 for rent and his share of utilities.
16. On February 25, 2021, the relationship ended abruptly. It is disputed whether Ms. Suttie kicked Mr. Handley out or Mr. Handley left, but I find nothing turns on this. Mr. Handley left Ms. Suttie's home with few of his belongings. In the short time the parties lived together, they had intermingled their belongings, including their large collections of MTG cards and vintage video games. They also each bought MTG cards during the relationship. For Ms. Suttie, this intermingling made the process of collecting Mr. Handley's belongings time consuming because she had to sort through everything in her house to find what was his.
17. Mr. Handley paid Ms. Suttie \$800 on March 1, 2021. This is the disputed \$800. The payment was by e-transfer and there was no accompanying message or note.
18. Mr. Handley picked up some items from Ms. Suttie on February 27, 2021. Ms. Suttie's father delivered more of Mr. Handley's belongings to Mr. Handley's home on March 20, 2021, in 2 separate loads. Mr. Handley went to Ms. Suttie's house in late March or early April and retrieved more items. On April 8, 2021, Ms. Suttie's father delivered a third load of Mr. Handley's belongings. Again, none of this is disputed.

***Was Mr. Handley's \$800 payment for a settlement, and if so, is he entitled to repayment of the \$800?***

19. As mentioned above, the parties dispute why Mr. Handley paid Ms. Suttie \$800 on March 1, 2020, after they had broken up. Mr. Handley says that during a phone call

shortly after he moved out, Ms. Suttie threatened to sell his valuable belongings, including his MTG cards, if he did not send her \$1,000 or return a Nintendo Switch she had given him for Christmas. He says that he agreed to send her \$800 to ensure that he got his belongings back and got a “fair share” of their “mutually collected items”. He also says that he paid the \$800 to ensure a “civil separation”.

20. Mr. Handley says that Ms. Suttie should return the \$800 because she breached this agreement by failing to give him most of his belongings back in a reasonable time, and for keeping some of his belongings. He also says that she failed to remain civil after their separation, in part by making the process of getting his belongings back unnecessarily complicated and emotionally draining.
21. For her part, Ms. Suttie says that Mr. Handley paid the \$800 for rent and utilities for March 2021. She says that he agreed to pay this money because he left so abruptly. Mr. Handley says that they did not discuss giving notice.
22. Proving the existence of a separation agreement between romantic partners is no different than proving the existence of any other contract. The party asserting the contract, here Mr. Handley, must prove that the parties agreed to specific terms. He must prove that one of them made an offer, that the other accepted the offer, and that they exchanged something of value, which is called “consideration”.
23. As evidence that the \$800 payment was not for rent and utilities, Mr. Handley says that \$800 was more than he had agreed to pay in rent and utilities for previous months. He relies on a text Ms. Suttie sent him on January 26, 2021, which calculated his contribution to rent and utilities as \$718. However, he does not explain the discrepancy between this \$718 and the \$830 he actually paid Ms. Suttie on February 1, 2021. So, I find that the list of expenses in the January 26 text must not have been a complete list. I find that the amount of the \$800 payment does not help me determine whether it was for rent and utilities or a settlement.
24. On the evidence before me, I am not satisfied that there was a contract as Mr. Handley alleges. I find that Mr. Handley likely offered to pay the \$800 to help with

March rent and utilities, while also hoping that it would help make the separation process civil. However, I am not satisfied that he attached any specific terms to this offer, such as the prompt return of his belongings, a reasonable share of the MTG cards that he considered jointly owned, or that Ms. Suttie act in a particular way. I say this primarily because neither party ever mentioned such an agreement in later correspondence. In particular, Mr. Handley did not mention the alleged agreement in his messages asking Ms. Suttie or her father to return his belongings. If there had been an agreement, I find that Mr. Handley likely would have referred to it in these messages.

25. Given my finding that the parties did not have a contract that attached any conditions or terms to the \$800 payment, I find that none of Ms. Suttie's subsequent conduct means that she must return it. I dismiss Mr. Handley's \$800 claim.

***Does Ms. Suttie still have any of Mr. Handley's belongings, and if so, is he entitled to their return?***

26. As mentioned above, over the course of several weeks Mr. Handley went to Ms. Suttie's house twice to retrieve his belongings and had 3 deliveries from Ms. Suttie's father. At several points over the course of this process, Mr. Handley created lists of what he was still missing.
27. According to Mr. Handley, he sent his "final" list to Ms. Suttie's father on April 8, 2021. The list included a "bag of t-shirt offcuts", 3 video game controllers, an HDMI cord, 7 video games, some MTG cards, and half of the MTG cards that the parties purchased together during the relationship. He also says that his savings jar, which was an electronic savings jar that tracked how much change was in it, displayed "\$7.40" but was empty. He says that this proves that Ms. Suttie took his change.
28. Ms. Suttie denies having any of the listed items and denies taking his change. She provided a statement from her mother, who said that she and Ms. Suttie did a "whole home purge" and found nothing further of Mr. Handley's in her house. A statement from Mr. Suttie's father says the same thing. However, I place little weight

on these statements because it is clear from the commentary in their statements that they are not neutral witnesses.

29. It is inherently difficult for someone in Mr. Handley's position to prove that someone else has his belongings. In the circumstances here, there is essentially no way for him to get objective or conclusive evidence of what is still in Ms. Suttie's home. Rather, Mr. Handley has attempted to convince me that Ms. Suttie is not being truthful in her evidence. While he provided extensive evidence about Ms. Suttie's character and behaviour during their admittedly tumultuous relationship, I find that even if true, this does nothing to prove whether she is telling the truth in this dispute.
30. It is impossible to know with certainty whether Ms. Suttie still has any of Mr. Handley's belongings. On balance, I find it more likely than not that Ms. Suttie has given Mr. Handley everything of his that she has found in her house. I say this because over the course of 5 deliveries, by Mr. Handley's own admission she gave back the vast majority of his belongings. I find it unlikely that she would do so only to intentionally withhold a small number of relatively low value items out of spite, as he alleges.
31. Mr. Handley faces the same problem in his claim about the change jar. He provided a photo of the empty change jar, but this is not necessarily evidence that it was full when he left it or empty when he got it back. Also, while it is possible that Ms. Suttie took the change, I find that it is equally possible that Mr. Handley emptied the jar after he got it back. I therefore find that Mr. Handley has not proven that it is more likely than not that Ms. Suttie took the change.
32. In summary, I dismiss Mr. Handley's claim for the return of any further belongings and for \$7.40.

***Were any MTG cards gifts to Ms. Suttie, and if not, is he entitled to payment of \$1,110 for his alleged share in them?***

33. As mentioned above, the parties agree that they each bought many MTG cards during their relationship. It is also not disputed that they combined their card



collections while they were together. Mr. Handley admits that he gave a large number of MTG cards to Ms. Suttie on Christmas. However, he says that the parties intended to build a mutual collection and all of the cards he bought during the relationship were for this purpose, even the ones he gave her on Christmas. He says that he intended to gift the cards to Ms. Suttie and himself together as a couple. While he does not use this specific language, I find that he claims that the parties own these MTG cards jointly, so he is entitled to half their value. As noted, he claims \$1,100.

34. Ms. Suttie, on the other hand, says that she has returned all of the cards that Mr. Handley bought for himself during the relationship. She says that she has only kept the MTG cards she got at Christmas. She says that they each spent upwards of \$1,000 on the other for Christmas. She says that she gave him hundreds of dollars' worth of MTG cards and a Nintendo Switch, which he has kept.
35. According to Mr. Handley's bank records, he bought many MTG cards between November 2020 and February 2021. Clearly, he did not give all of these cards to Ms. Suttie on Christmas. So, I find that there are 2 groups of MTG cards at issue: those that Mr. Handley gave to Ms. Suttie on Christmas, and the rest that Mr. Handley bought during the relationship. With respect to the non-Christmas MTG cards, I dismiss Mr. Handley's claims for the same reasons discussed above with respect to his other belongings. I find it unlikely that Ms. Suttie kept them given that she returned so many of Mr. Handley's items.
36. As for the MTG cards given at Christmas, as mentioned above, Ms. Suttie must prove that they were a gift. There are 2 legal requirements for a transfer of property to be a gift: the person transferring the property must intend for it to be a gift, and the person must deliver the property to the recipient. The relevant time to assess a giver's intention is when they transfer the property. See *McKendry v. McKendry*, 2017 BCCA 48, at paragraph 31. This means that Ms. Suttie must prove that Mr. Handley transferred possession of the MTG cards to her, and that he intended for them to be a gift.

37. It is undisputed that Mr. Handley transferred possession of the MTG cards to Ms. Suttie. The question is what he intended when he did so. I am not persuaded by Mr. Handley's argument about his intentions. I find the context of a Christmas gift exchange between romantic partners is particularly relevant in coming to this conclusion. I accept that he likely gave Ms. Suttie the MTG cards expecting that the parties would stay together and enjoy them together. However, at the time Ms. Suttie unwrapped the MTG cards, I find it unlikely he considered them to be half hers and half his. There is also no evidence that Mr. Handley has offered to give back or compensate Ms. Suttie for the MTG cards or Nintendo Switch that he undisputedly received on Christmas from her. I find he likely intended the MTG cards at issue to be a gift at the time.
38. I therefore find that Ms. Suttie has proven that the MTG cards she received on Christmas were a gift. A gift, once given, cannot be revoked: see *McKendry*, at paragraph 32. I dismiss Mr. Handley's claim for reimbursement of half the value of the MTG cards he gave Ms. Suttie on Christmas.

***Does Mr. Handley have to pay Ms. Suttie for rent and utilities for December 2020 and January 2021?***

39. It is undisputed that Ms. Suttie agreed that Mr. Handley could live with her rent-free in December 2020 and January 2021. She says that she never would have offered this if she had known how and when the relationship would end. Mr. Handley says that Ms. Suttie offered this to induce him to quit his new, higher paying job and move back to her community.
40. There is no suggestion that there were any conditions or terms to Ms. Suttie's offer to allow Mr. Handley to temporarily live with her rent-free. Rather, Ms. Suttie's submissions indicate she now regrets it. With that, I find that it is not open to Ms. Suttie to seek retroactive rent because the parties broke up. I dismiss this claim.

***Does Mr. Handley have to pay Ms. Suttie \$300 because her father delivered Mr. Handley's belongings?***

41. As for Ms. Suttie's \$300 claim for the deliveries her father made, there is no evidence that he charged Ms. Suttie for his time. Rather, in his statement, Ms. Suttie's father says that he had to take time off work, presumably at a cost to him. However, Ms. Suttie's father is not a party to this dispute. I find that Ms. Suttie has no standing, or legal right, to ask for compensation for a person who is not a party to this dispute. I dismiss this claim.
42. 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. Neither party was successful, so I make no order for CRT fees or dispute-related expenses.

**ORDER**

43. I dismiss both parties' claims, and this dispute.

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Eric Regehr, Tribunal Member