



Civil Resolution Tribunal

Date Issued: January 26, 2022

File: SC-2021-005836

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kullar v. Enston*, 2022 BCCRT 100

BETWEEN:

SALLY KULLAR

APPLICANT

AND:

ANTHONY ENSTON (AKA ANTHONY JOHN ENSTON)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a personal loan. The applicant Sally Kullar loaned \$8,000 to the respondent Anthony Enston (aka Anthony John Enston) so he could buy her

car. Ms. Kullar says Mr. Enston failed to make the required payments and failed to pay off the loan by June 30, 2021 as allegedly agreed. Ms. Kullar claims \$4,550 for the outstanding loan balance.

2. Mr. Enston admits he borrowed the money but denies ever agreeing to an “end date” for the loan’s repayment. He also says Ms. Kullar agreed not to charge him interest.
3. The parties 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. To some extent the parties submitted evidence of issues related to Mr. Enston's tenancy. I find those issues are not before me in this dispute, which is only about Mr. Enston's loan repayment obligations.

ISSUE

9. The issue is whether Ms. Kullar is entitled to repayment of the loan with any interest.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Ms. Kullar has the burden of proving her claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
11. Mr. Enston was Ms. Kullar's tenant. He wanted to buy a car from her and required financial assistance. It is undisputed Ms. Kullar loaned Mr. Enston \$8,000 for the car's purchase.
12. On November 11, 2020, Mr. Enston signed a witnessed promissory note for \$8,000. In it, he simply "promised to pay" Ms. Kullar the \$8,000 and no repayment dates were set out.
13. In the Dispute Notice that started this proceeding, Ms. Kullar said Mr. Enston agreed to pay her \$200 every "Friday payday" and that he verbally agreed to have the entire loan repaid by June 30, 2021. Mr. Enston denies agreeing to pay the loan off by that date and says that would have been impossible for him to do.
14. Ms. Kullar says Mr. Enston made the required payments up to April 30, 2021, but then his payments became less frequent and he only paid \$50 towards the loan for June 2021 (since the rest of his \$1,200 he said was for rent). Ms. Kullar's "payment record" shows Mr. Enston made payments of varying amounts, starting with \$200 on November 13, 2020, leaving the claimed \$4,550 balance owing as of July 2, 2021.

15. However, by Mr. Enston's own record of payments, as of April 30, 2021 he owed \$4,750, which Ms. Kullar agrees with. Another record submitted by Mr. Enston shows he owed \$4,550 as August 1, 2021, which is the claimed amount. I accept \$4,550 was owing as of August 1, 2021.
16. In one of his submitted evidence items, Mr. Enston says he paid a further \$94.79 on September 3, 2021, which he describes as being the 1st of 48 payments towards the \$4,550 balance. Ms. Kullar says this \$94.79 was applied to damage from Mr. Enston's tenancy. Mr. Enston did not address this in his submissions. On balance, I find Mr. Enston has not proved he paid a further \$94.79 towards the loan debt. I find the loan balance is currently \$4,550.
17. Elsewhere in his evidence Mr. Enston says, "I will continue on a payment schedule" and says that he has not failed to make required payments. He further says the initial agreement was that he would make payments when he got paid "once or twice a month" with "no structural payment amount and no timeframe". Mr. Enston says he has witnesses who can attest to his version of events. However, Mr. Enston submitted no witness statements.
18. I find I do not need to decide whether Mr. Enston verbally agreed to pay off the loan by June 30, 2021, as Ms. Kullar alleges. If he had, that date has passed and the loan balance is due. If he did not, the loan is now due anyway. This is because a loan made without a specific due date is a "demand loan", as opposed to a contingent loan that is agreed to be payable on a specified future date or upon the occurrence of a specified event. In law, for a demand loan like this one here, repayment was due when Ms. Kullar demanded it (see *Kong v. Saunders*, 2014 BCCA 508). So, contrary to Mr. Enston's assertion, he is not legally entitled to repay the loan when he chooses to do so. In any event, I find the evidence shows his payment amounts and frequency were inconsistent with what the parties likely agreed and so I find it reasonable that Ms. Kullar requested repayment.

19. Given the above, I find Mr. Enston owes Ms. Kullar the claimed \$4,550 and she is entitled to payment on the terms set out in my Order below.
20. Ms. Kullar does not claim contractual interest and there is no evidence the parties agreed to interest as that was not set out in the promissory note. In the absence of an agreement on interest, Ms. Kullar is entitled to pre-judgment interest under the *Court Order Interest Act (COIA)*, which applies to the CRT. Calculated from August 1, 2021, a date I find reasonable in the circumstances, to the date of this decision, this interest equals \$10.01.
21. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Kullar was successful, I allow her claim for reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

22. Within 30 days of this decision, I order Mr. Enston to pay Ms. Kullar a total of \$4,735.01, broken down as follows:
 - a. \$4,550 in debt,
 - b. \$10.01 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
23. Ms. Kullar is entitled to post-judgment interest, as applicable.
24. 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.

25. 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.

Shelley Lopez, Vice Chair