



Civil Resolution Tribunal

Date Issued: July 15, 2022

File: SC-2021-009553

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clearly Plumbing and Drainage Ltd. v. Carter*, 2022 BCCRT 810

B E T W E E N :

CLEARLY PLUMBING AND DRAINAGE LTD.

APPLICANT

A N D :

RILEY CARTER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about an allegedly stolen cell phone. The applicant, Clearly Plumbing and Drainage Ltd. (Clearly), says its former employee, the respondent Riley Carter, stole its cell phone. Clearly claims \$999 for the cell phone.
2. In his Dispute Response filed at the outset of this proceeding, Mr. Carter admits he “left with the phone”. Mr. Carter says Clearly refused to give him his final paycheque so he still has the phone. Mr. Carter chose not to file a counterclaim for the wages, despite being offered the opportunity to do so.
3. Clearly is represented by an employee. Mr. Carter is 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). CRTA section 2 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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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.
8. As noted above, Mr. Carter says he retained the phone because Clearly did not give him his final paycheque. As also noted, Mr. Carter chose not to file a counterclaim and he later stopped participating in this dispute and filed no documentary evidence and made no written submissions, despite emails and phone calls from CRT staff. In one phone call, Mr. Carter told CRT staff he had not received emails and that the CRT had the incorrect email address. That phone connection was cut off and CRT staff called back a few times without reaching Mr. Carter. CRT staff then left a voice mail for Mr. Carter and provided CRT contact information and a new deadline for Mr. Carter to submit any evidence or submissions. Mr. Carter did not respond. Parties are told they are required to keep their contact information current and actively monitor for dispute-related communications, which is also set out in the CRT's rules. In the absence of a counterclaim, I decline to address the wages issue, particularly given Mr. Carter's decision to stop actively participating. My decision below addresses the cell phone only.

ISSUE

9. The issue is whether Clearly is entitled to the claimed \$999 for the cell phone Mr. Carter has undisputedly retained.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Clearly must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read Clearly's argument but refer only to what I find relevant to provide context for my decision. I note neither party submitted any documentary evidence.
11. As noted, Mr. Carter admits he took the cell phone and has kept it. As also noted, Clearly submitted no evidence and no explanation of how it arrived at the claimed

\$999 figure. There is no description of the cell phone, such as a brand or model year. There are no quotes or invoices for its original purchase or replacement. Parties are told to submit all relevant evidence and I find proof of the claimed \$999 value is clearly relevant.

12. In the absence of supporting evidence, I decline to order \$999 as claimed. However, I accept the cell phone has some value and as noted Mr. Carter has kept it. On a judgment basis, I find Clearly is entitled to \$300 in damages for the cell phone.
13. I note in his Dispute Response, Mr. Carter wrote Clearly could have the phone back. I decline to make that order because Clearly says it has already replaced the phone and because Clearly did not seek the phone's return in this dispute.
14. The *Court Order Interest Act* (COIA) applies to the CRT. I find Clearly is entitled to pre-judgment interest on the \$300, under the COIA. However, in the Dispute Notice Clearly said it became aware of the claim on November 17, 2021. Calculated from that date to the date of this decision, pre-judgment interest equals \$1.04.
15. 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 Clearly was partially successful, I find it is entitled to reimbursement of half its paid CRT fees, which equals \$67.50. Clearly did not claim dispute-related expenses.

ORDERS

16. Within 21 days of this decision, I order Mr. Carter to pay Clearly a total of \$368.54, broken down as follows:
 - a. \$300 in damages,
 - b. \$1.04 in pre-judgment COIA interest, and
 - c. \$67.50 in CRT fees.

17. Clearly is entitled to post-judgment interest as applicable.
18. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Acting Chair and Vice Chair