Civil Resolution Tribunal

Original Date Issued: September 2, 2022

Amended Date Issued: September 6, 2022

File: SC-2021-008368

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sokolov v. Forest*, 2022 BCCRT 987

B E T W E E N :

DANIEL SOKOLOV

APPLICANT

A N D :

ORISSA FOREST

RESPONDENT

AMENDED [i] REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. The applicant, Daniel Sokolov, lived with the respondent, Orissa Forest, in a romantic relationship for about 5 months. Mr. Sokolov claims that Ms. Forest owes him $293.68 for her share of heating oil, internet, and utilities expenses that he paid for while they

lived together. Mr. Sokolov also claims that Ms. Forest owes him an additional $1,611.05 for heating oil because he left her with a full tank, and an additional $39.89 for internet service because he pre-paid for the month after he moved out. He also seeks repayment of an alleged $100 cash loan.

2. Ms. Forest denies that she and Mr. Sokolov were equal partners when it came to paying for shared living expenses. She says they agreed to each pay what they could afford and that she should not have to pay him back for the claimed expenses. Ms. Forest says Mr. Sokolov filled the heating oil tank as a gift before he moved out. She admits that she borrowed $37 from Mr. Sokolov and cannot recall if she paid him back. Ms. Forest says if she owes Mr. Sokolov anything, then he should also have to reimburse her for half of the electricity and other utilities she paid for while they lived together. Ms. Forest did not file a counterclaim.

3. Mr. Sokolov does not dispute that he owes Ms. Forest for half the expenses she paid for, but he does not agree with the amount Ms. Forest says is owing.

4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. 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 to 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 in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, 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.

7. 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.

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.

9. I note that the BC Supreme Court has exclusive jurisdiction over the division of family assets and debts under the *Family Law Act* (FLA), which applies to people who are either legally married or who live together in a marriage-like relationship for at least 2 years. As noted, the parties only lived together for about 5 months. Therefore, I find the FLA does not apply, and the CRT has jurisdiction to decide this claim.

ISSUES

10. The issues in this dispute are:

    a. To what extent, if any, does Ms. Forest owe Mr. Sokolov $293.68 for shared living expenses?

    b. To what extent, if any, does Ms. Forest owe Mr. Sokolov $1,650.94 for heating oil and internet used after Mr. Sokolov moved out?

    c. Did Mr. Sokolov fill the heating oil tank as a gift to Ms. Forest?

    d. Does Ms. Forest owe Mr. Sokolov $100 as repayment of a cash loan?

e. To what extent, if any, is Ms. Forest entitled to a set-off of any amount owing to Mr. Sokolov for living expenses she paid for?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"). However, under the law of gifts, Ms. Forest must prove that the heating oil was a gift, as she alleges. Ms. Forest must also prove she is entitled to a set-off for Mr. Sokolov's share of living expenses she paid for. I have read all the parties' evidence and submissions, but I refer only to what is necessary to explain my decision.

Does Ms. Forest owe Mr. Sokolov $293.68 for shared living expenses?

12. The parties started a romantic relationship in about April 2019. They entered into a tenancy agreement to lease accommodation together for a 1-year fixed term between July 1, 2019 and June 30, 2020, though they arranged to move in a few days early, on June 25, 2019. The monthly rent was $1,895, which did not include utilities such as hydro, internet, heating oil, or municipal services (water, sewage, and garbage removal). The tenancy agreement stated that tenants were responsible for reimbursing the previous tenant for the value of any oil left in the oil tank when the new tenant took possession of the unit. None of this is disputed.

13. The parties' romantic relationship ended sometime in November 2019, and Mr. Sokolov moved out on December 1, 2019. Ms. Forest remained in the parties' leased accommodation and found new roommates. This is also undisputed.

14. However, the parties generally disagree on the terms of their agreement about paying for shared living expenses. Mr. Sokolov says they agreed to share expenses equally. In contrast, Ms. Forest says that they agreed to contribute what they could each afford. She says she was earning significantly less than Mr. Sokolov, and it was a condition of living together that she would not end up owing him money. Ms. Forest provided evidence that she rented her previous apartment for $800 per month,

including utilities. She says she could not afford to contribute much more than that to the parties' expenses, so Mr. Sokolov agreed that she could pay $800 towards the monthly lease payments and his share would be $1,095 per month. Ms. Forest says she also agreed to pay for electricity and city utilities, while Mr. Sokolov agreed to pay the other expenses.

15. Mr. Sokolov denies any agreement that the parties "pay what they could afford". Mr. Sokolov says he agreed to initially pay a larger portion of the rent because Ms. Forest was starting a business with significant start-up costs. He says they discussed that Ms. Forest could sublet a room during periods when Mr. Sokolov was travelling for work to make up the shortfall on her half of the rent, and that he agreed not to "charge her" the difference until she realized some sublet revenue. As Mr. Sokolov only raised this submission for the first time in his final reply submissions, Ms. Forest did not have an opportunity to respond to it. However, I find nothing turns on it because Mr. Sokolov does not claim any reimbursement for Ms. Forest's share of the rent.

16. Overall, I find the parties likely agreed they would each be responsible for paying certain expenses. It is undisputed that Ms. Forest paid the electricity and city utilities, and Mr. Sokolov paid for the heating oil and internet service. There is no evidence before me that the parties made any attempt to equalize responsibility for these expenses while they lived together. That is, there is no suggestion that the parties took account of their monthly payments and asked the other to pay half. So, on balance, I accept Ms. Forest's submission that it was only after their romantic relationship ended that Mr. Sokolov took the position that their shared living expenses should be paid equally.

17. Given my finding that the parties agreed to each pay for certain expenses, I find Mr. Sokolov is not entitled to be reimbursed for half of his expenses while the parties lived together. It follows that I also find Ms. Forest is not entitled to any set-off for the expenses she paid for. I note the parties agree Mr. Sokolov paid for the first city utilities bill for service up to July 15, 2019, which totaled $18.71. However, again, there is no evidence Mr. Sokolov requested that Ms. Forest reimburse him for half of

that expense at the time. Therefore, I find the parties likely agreed that Mr. Sokolov would take responsibility for that payment, and I decline to order Ms. Forest to pay half.

Does Ms. Forest owe Mr. Sokolov $1,650.94 for additional heating oil and internet?

18. It is undisputed that Mr. Sokolov arranged to top up the heating oil tank shortly before he moved out, and that his credit card was charged for internet service at their residence for the month of December 2019, which was after he moved out.

19. While Ms. Forest says she was previously unaware that Mr. Sokolov paid for December's internet service, she does not specifically dispute that she owes him the claimed $39.89. So, I order her to pay Mr. Sokolov $39.89 for internet service.

20. As for the heating oil, Mr. Sokolov says the parties agreed that he would fill the tank before his departure so they could calculate their shared use, and he says Ms. Forest agreed she would reimburse him later, in April 2020. I note that Mr. Sokolov initially claimed $1,625.18 because he believed the oil tank held 1,150 litres, but in submissions he reduced his claim to $1,611.05 because he later found an insurance form that stated the tank held 1,140 litres. Based on a copy of the insurance form in evidence, and in the absence of any evidence to the contrary, I accept that the oil tank's volume was 1,140 litres. Mr. Sokolov says Ms. Forest should pay him for 1,140 litres, because she received the sole benefit of a full oil tank, all of which he says he paid for.

21. Ms. Forest submits that Mr. Sokolov moved out of town after they broke up, but despite their breakup, he said he wanted to come back in 6 months to continue their relationship, get married, and start a family. She says she understood that topping up the oil tank was a gift so that she could afford to stay in the residence during the planned 6-month break in their relationship. She denies that she agreed to reimburse Mr. Sokolov for the oil.

22. Under the law of gifts, once an applicant has proved a transfer, the burden shifts to the person receiving the transfer to establish it was a gift. See *Pecore v. Pecore*, 2007 SCC 17. So, Ms. Forest bears the burden of proof to establish that Mr. Sokolov gifted her the heating oil. For there to be a legally effective gift, 3 things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The evidence must show that the intention of leaving Ms. Forest with a full tank of heating oil as a gift is inconsistent with any other intention. See *Lundy v. Lundy*, 2010 BCSC 1004. For the reasons that follow, I find the weight of the evidence does not support Ms. Forest's assertion that the heating oil was a gift to her.

23. First, the evidence shows that on December 9, 2019, Mr. Sokolov emailed Ms. Forest receipts for the oil, which was about 9 days after he moved out. While Mr. Sokolov does not specifically request in the email that Ms. Forest reimburse him, I find that providing her with documentation of the expense is some evidence that he did not intend to donate the oil to Ms. Forest. Further, Ms. Forest did not mention in her Dispute Response that the oil was a gift, which I would have expected had she believed Mr. Sokolov gifted her the oil, particularly given that it comprised the bulk of his monetary claim. Finally, I find that Mr. Sokolov's explanation that he topped up the oil shortly before he moved out to determine how much oil they had used together is equally as possible as it being a gift. Overall, I find Ms. Forest has not met her burden to establish the oil was a gift.

24. However, even though I find the oil was not a gift, I find that Mr. Sokolov would be overcompensated if Ms. Forest had to pay him for a full tank. My reasons follow.

25. Mr. Sokolov provided receipts showing he paid for 816.9 litres of oil on October 2, 2019, and a further 241.4 litres on November 28, 2019. Together, those amounts equal 1,053.3 litres, which is less than the equivalent of a full 1,140 litre tank.

26. The parties acknowledge that there was already some oil in the tank when they moved in, left by the previous tenant, but they do not know how much. Mr. Sokolov says he paid their landlord "several hundred dollars" to reimburse the previous tenant for the existing oil, as required under the tenancy agreement. Ms. Forest says that

Mr. Sokolov never paid the previous tenant anything. Mr. Sokolov provided no evidence that he made the alleged payment, such as bank records or a statement from the landlord or previous tenant, and so I find it unproven that Mr. Sokolov paid for the existing oil.

27. The next issue is determining how much oil the parties used while they lived together. In the 57 days between October 21 and November 28, 2019, the parties used 241.4 litres of oil, which works out to an average of 4.2 litres per day (241.4 litres / 57 days).

28. While I acknowledge it is possible the parties used less oil in the warmer summer months, in the absence of any better evidence, I have applied that daily average to conclude that the parties used about 415.8 litres of oil for the 99 days between June 25, 2019, when the parties moved in, to October 2, 2019 (99 days x 4.2 litres). Further, for the 3 days between the November 28, 2019 fill-up and when Mr. Sokolov moved out, the parties likely used a further 12.6 litres together. This means the parties used a total of about 669.8 litres of oil while they lived together (415.8 + 241.4 + 12.6). As noted above, I find Mr. Sokolov agreed to pay for the oil they used together.

29. So, given Mr. Sokolov paid for 1,058.3 litres and the parties used 669.8 litres together, I find that Ms. Forest owes Mr. Sokolov for 388.5 litres (1,058.3 – 669.8). At the $1.403 price per litre that Mr. Sokolov paid for the oil on November 28, 2019, that equals $545.07. I order Ms. Forest to pay Mr. Sokolov $545.07 for the oil he paid for but that she received the sole benefit of after December 1, 2019.

Does Ms. Forest owe Mr. Sokolov $100 as repayment of a cash loan?

30. Mr. Sokolov says that when he decided to move out, Ms. Forest wanted to rent out one of the rooms, and he loaned Ms. Forest $100 for furniture so she could advertise the room as furnished. He says he paid sellers directly for various items, including a nightstand, a lamp, and a table, and that he gave Ms. Forest an additional $45 cash.

31. In Ms. Forest's Dispute Response, she admitted to borrowing $45 for furniture. In submissions, she says she initially thought she paid more for the side tables but later found the advertisement and discovered they were only $25, a copy of which she filed

in evidence. She says the items Mr. Sokolov bought for her totaled $37, including $7 for a lamp, $25 for the side tables, and $5 for a nightstand.

32. Contrary to Mr. Sokolov's submission, I do not interpret Ms. Forest's submissions to mean that she borrowed $45 in cash, *plus* the $37 for the furniture set out above. Rather, I find Ms. Forest's position is that Mr. Sokolov loaned her a total of $37 for furniture. Mr. Sokolov did not provide any supporting evidence of the alleged $45 cash loan or of additional furniture items he purchased for Ms. Forest. Given that Ms. Forest admits to borrowing $37 for furniture, I accept that she owes him that amount. However, I find Mr. Sokolov has not established that she owes him anything further. So, I order Ms. Forest to reimburse Mr. Sokolov $37 for furniture.

Summary, interest, CRT fees and expenses

33. In summary, I find Ms. Forest must pay Mr. Sokolov a total of $621.96, which is $39.89 for internet, $545.07 for heating oil, and $37 for reimbursement of the furniture loan.

34. The *Court Order Interest Act* applies to the CRT. Mr. Sokolov is entitled to pre-judgment interest on the $621.96 from April 30, 2020, the last day of the month Mr. Sokolov says he expected payment, to the date of this decision. This equals $9.51.

35. 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 find Mr. Sokolov was partly successful in this dispute, and so he is entitled to reimbursement of $62.50 for half his paid CRT fees. Ms. Forest did not pay any fees and neither party claimed any dispute-related expenses.

ORDERS

36. Within 30 days of the date of this decision, I order Ms. Forest to pay Mr. Sokolov a total of $693.97, broken down as follows:

    a. $621.96 in debt for internet service, heating oil, and reimbursement of a loan,

    b. $9.51 in pre-judgment interest under the *Court Order Interest Act*, and

c. $62.50 in CRT fees.

37. Mr. Sokolov is entitled to post-judgment interest, as applicable.

38. I dismiss Mr. Sokolov's remaining claims.

39. 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.

Kristin Gardner, Tribunal Member

Amendment Notes:

[i] Amended under CRTA section 64 to correct inadvertent calculation errors in paragraphs 29, 33, 34, and 36. All corrected errors are marked in underlined text.