



# Civil Resolution Tribunal

Date Issued: August 25, 2023

File: SC-2022-008060

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cook v. Fod Cocktail Lounge Kelowna Inc.*, 2023 BCCRT 729

BETWEEN:

TYSON COOK

**APPLICANT**

AND:

FOD COCKTAIL LOUNGE KELOWNA INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about drag entertainment services. In 2022 the applicant, Tyson Cook, provided drag entertainment services to the respondent, Fod Cocktail Lounge Kelowna Inc. (FoD). Mr. Cook earned \$150 per night for hosting FoD's karaoke nights.

2. Mr. Cook says that in the summer of 2022 FoD agreed to pay them an additional \$100 per night for hosting Canada's Drag Race viewing parties before regularly scheduled karaoke nights. Mr. Cook says FoD failed to pay the additional \$100 fee for all but 1 of the viewing parties they hosted. They also say FoD failed to pay their regular karaoke night hosting fees on 2 of these occasions. Mr. Cook claims \$1,100 for the unpaid drag services.
3. FoD says it never agreed to pay Mr. Cook an additional fee for the viewing parties, and that it has paid them for all their services. FoD says it does not owe Mr. Cook anything.
4. Mr. Cook is self-represented and FoD is represented by an employee or principal.

## **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.
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. 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.
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.

## **ISSUE**

9. The issue in this dispute is whether Mr. Cook is entitled to \$1,100 for unpaid drag entertainment services.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant, Mr. Cook must prove their claims on a balance of probabilities, which means more likely than not. FoD chose not to provide evidence despite having the opportunity to do so. I have read all the parties' submissions and Mr. Cook's evidence but refer only to what I find relevant to explain my decision.
11. As noted above, Mr. Cook charged \$150 per night for hosting FoD's regular karaoke nights. In the summer of 2022, Mr. Cook suggested to FoD's manager KL that they could host Canada's Drag Race viewing parties before FoD's regularly scheduled karaoke nights. KL agreed, and Mr. Cook hosted a total of 9 viewing parties followed by karaoke nights between July 14 and September 8, 2022. None of this is disputed.
12. Mr. Cook says KL verbally agreed to pay them an additional \$100 per night for hosting the viewing parties. In support of their position, Mr. Cook submitted a June 17, 2022 text exchange with KL in which Mr. Cook asked if they would be paid more for the viewing parties. KL responded, "Of course I'd pay you extra". Mr. Cook says that on August 11, 2022, KL paid them \$100 in cash for the viewing party they hosted on July 14, 2022.
13. Mr. Cook submitted a witness statement from their assistant JK who confirmed this payment. JK said KL told Mr. Cook at that time that FoD would pay them an additional \$100 per viewing party. However, JK did not say whether they witnessed this payment

and conversation in person or whether Mr. Cook relayed it to them. I also note the statement is not neutral since JK works for Mr. Cook. For these reasons, I place little weight on JK's statement.

14. FoD denies agreeing to pay Mr. Cook an additional fee for hosting the viewing parties, and it denies paying them \$100 in cash. FoD says KL is responsible for acquiring talent, hiring outside agents, booking entertainment, and authorizing invoice payments at the location where Mr. Cook worked. However, Mr. Cook submitted an undated text exchange in which KL told them that FoD's managing partner RT "didn't approve the drag race viewing budget". In another undated text KL said, "I don't know why this is being sorted out now. It's definitely a communication issue on our end and I apologize for that". Later in the exchange Mr. Cook said, "You can't just change the agreement a month after it happened". KL responded that RT "never agreed to it. He is the one paying. I'm at a loss. It's also out of my hands." I find these text messages are contrary to FoD's position that KL had the authority to hire Mr. Cook and approve their invoices. FoD also did not submit a statement from KL about Mr. Cook's alleged agreement with them.
15. An undated text from KL also says RT would not pay Mr. Cook the additional viewing party fee because they did not work any extra time on the nights they hosted the viewing parties, and FoD did not receive sufficient sales or revenue to justify the additional fee. However, there is no evidence of the hours Mr. Cook worked on the viewing party nights compared to the regular karaoke nights. There is also no evidence that KL's promise in their June 17, 2022 text to pay Mr. Cook "extra" was contingent on FoD receiving a certain amount of sales or revenue on the viewing party nights.
16. For all of these reasons, I prefer Mr. Cook's version of events. I am satisfied that FoD agreed to pay Mr. Cook an additional \$100 fee per night for hosting the viewing parties. I am also satisfied that FoD paid Mr. Cook \$100 cash for hosting the first viewing party on July 14, 2022.

17. Mr. Cook says FoD failed to pay them the additional \$100 viewing party fee for 8 viewing parties they hosted between July 21 and September 8, 2022, for a total of \$800. They also say FoD failed to pay their regular \$150 fee for hosting karaoke nights on September 1 and 8, 2022 after the viewing parties, for a total of \$300. I find Mr. Cook's invoices, bank records, and emails in evidence support these claims. FoD says Mr. Cook failed to sufficiently perform their duties but provided no explanation or evidence to support this assertion. FoD also says it paid all of Mr. Cook's invoices, but I find the evidence shows otherwise. So, I find FoD must pay Mr. Cook \$800 for hosting the 8 viewing parties and \$300 for hosting 2 karaoke nights, for a total of \$1,100.
18. The *Court Order Interest Act* applies to the CRT. The Mr. Cook is entitled to pre-judgment interest on the \$1,100 owing calculated from September 8, 2022, which is the latest date Mr. Cook provided unpaid drag services, to the date of this decision. This equals \$38.52.
19. 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 see no reason in this case not to follow that general rule. Since Mr. Cook was successful, I find they are entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

20. Within 30 days of the date of this order, I order FoD to pay Mr. Cook a total of \$1,263.52, broken down as follows:
  - a. \$1,100 for the unpaid drag entertainment services,
  - b. \$38.52 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
21. Mr. Cook is entitled to post-judgment interest, as applicable.

22. 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.

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Sarah Orr, Tribunal Member