



# Civil Resolution Tribunal

Date Issued: February 20, 2024

File: SC-2022-006876

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *King v. Henry*, 2024 BCCRT 154

BETWEEN:

JAMES CARL KING

**APPLICANT**

AND:

TERESA JOY HENRY and JONATHAN MATTHEW HENRY

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about a personal loan.
2. The applicant, James Carl King, loaned the respondent, Teresa Joy Henry, \$1,650. Throughout this decision, I refer to these parties as the applicant and the respondent.

3. Jonathan Matthew Henry is the respondent's husband.
4. The applicant says the respondent signed a promissory note requiring them to repay him the loan's balance, interest-free, by June 30, 2021. The applicant says the respondent has not paid him back. The applicant claims \$1,650 in debt.
5. The respondent says they paid the applicant back on June 5, 2021 by putting \$1,650 in cash into an envelope and leaving it in the applicant's BBQ. They ask me to dismiss the applicant's claim.
6. The applicant, the respondent, and Jonathan Matthew Henry are each self-represented.
7. For the reasons that follow, I allow the applicant's claim.

## **JURISDICTION AND PROCEDURE**

8. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.
9. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia

Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

10. 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.
11. Where permitted by CRTA section 118, 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.

### ***Preliminary Issue - Respondents***

12. In his Dispute Notice, the applicant names Jonathan Matthew Henry as a respondent. However, there is no evidence that the applicant loaned Jonathan Matthew Henry any money and he does not name Jonathan Matthew Henry in the promissory note. So, I find there is no basis for the applicant's claim against Jonathan Matthew Henry, and I dismiss it.

### **ISSUE**

13. The issue in this dispute is whether the respondent owes the applicant \$1,650 under the promissory note.

### **EVIDENCE AND ANALYSIS**

14. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. While they provided a Dispute Response setting out their basic position, the respondent did not provide any other written submissions or documentary evidence in this proceeding.
15. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. This means "more likely than not." However, once the applicant

establishes the loan, the burden shifts to the respondent to prove they have repaid the debt.

16. The applicant loaned the respondent \$1,650. On February 10, 2021, the applicant prepared a handwritten promissory note, stating the amount, and saying it was due, interest-free, on June 30, 2021. The respondent signed the note. None of this is disputed.
17. I find the promissory note proves the loan. So, the burden shifts to the respondent to prove they have repaid the loan.
18. The applicant says he reminded the respondent of the promissory note in mid-November 2021 and followed up a week later by text message. The respondent said they had already paid the loan back. The applicant disagreed, saying this was the first time the parties had discussed the loan since February 10. In none of the respondent's text messages did they provide any details about how or when they repaid the loan.
19. Over the following months, the parties had occasional discussions about the loan, both in person and by text message. The parties continued to disagree about whether or not the respondent had repaid the loan, and ultimately, the applicant filed this dispute.
20. As noted above, the respondent says they left \$1,650 in an envelope in the applicant's BBQ on June 5, 2021.
21. The parties explain the applicant helped manage the respondent's rental property and regularly collected rent from the respondent on behalf of a third party. The applicant acknowledges that, from time to time, he would give instructions to the respondent to put rent money in an agreed-upon location in his backyard. He says he gave these instructions on a case-by-case basis when he would call or text with the respondent. He says that did not happen here.

22. As noted above, the respondent does not provide any specifics about when or how they repaid the loan in the parties' text messages. The applicant alleges the respondent refused to provide a receipt, but if correct, I would have expected them to do something to document either the payment or the refusal. They did neither.
23. The applicant says the respondent did not raise the alleged repayment date in any in-person discussions. The applicant says the first time he heard the June 5 date was when the respondent filed their Dispute Response. Given this is the only argument in their defence, I would have expected the respondent to provide some evidence or explanation as to how they determined the date with such precision.
24. Instead, I find this situation is essentially an evidentiary tie. The respondent says they repaid the money, and the applicant says they did not. As noted above, the burden of proving repayment is with the respondent. Since they have not met that burden, I find the respondent owes the applicant the loan's full amount.
25. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$1,650 loan from June 30, 2021, the date the loan was due, to the date of this decision. This equals \$111.16.
26. Under CRTA section 49 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. I find the applicant is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

27. Within 14 days of the date of this order, I order Teresa Joy Henry to pay James Carl King a total of \$1,888.16, broken down as follows:
  - a. \$,1650 in debt,
  - b. \$111.16 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 in CRT fees.

28. The applicant is entitled to post-judgment interest, as applicable.

29. I dismiss the applicant's claim against Jonathan Matthew Henry.

30. 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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Christopher C. Rivers, Tribunal Member