



# Civil Resolution Tribunal

Date Issued: April 12, 2024

File: SC-2022-008206

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kenyon v. Letizia*, 2024 BCCRT 349

BETWEEN:

DARRYL KENYON

**APPLICANT**

AND:

STEVE LETIZIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. Steve Letizia rented 3 Sea-Doo personal watercraft from Darryl Kenyon. Mr. Kenyon says Mr. Letizia damaged the Sea-Doos and a battery booster, and returned the Sea-Doos late. He claims \$1,145 in total.

2. Mr. Letizia denies damaging any Sea-Doos or equipment. He does not dispute that he returned the Sea-Doos late, but he says Mr. Kenyon has not proven any resulting loss.
3. Each party is self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.
6. 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 court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

## ISSUES

8. The issues in this dispute are:
  - a. Is Mr. Kenyon entitled to compensation because Mr. Letizia returned the Sea-Doos late?
  - b. Were the Sea-Doos damaged while in Mr. Letizia's possession, and if so, what remedy is appropriate?
  - c. Is Mr. Kenyon entitled to any of his other claimed remedies?

## EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Kenyon must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On July 20, 2022, Mr. Letizia signed a 2-page agreement to rent 2 Sea-Doos for 2 days for \$1,000. Mr. Letizia initialed to indicate he had read the terms and conditions, which were set out on a separate 4-page document. I acknowledge Mr. Letizia's submission that Mr. Kenyon did not sign the written agreement, but I find that does not mean the parties did not have a binding contract (see *Schuppener v. Pioneer Steel Manufacturers Limited*, 2019 BCSC 425, at paragraph 27).
11. During the 2-day rental period, Mr. Letizia had trouble getting one of the Sea-Doos started, and Mr. Kenyon travelled to the lake to start the Sea-Doo and to deliver a third Sea-Doo. He also provided a battery booster. One Sea-Doo took on water and Mr. Letizia had it towed to a marina to be pumped out.
12. Mr. Letizia returned the Sea-Doos the morning of July 23. The conversation became heated, in part because Mr. Letizia was supposed to return the Sea-Doos the night before, and in part because they disagreed about why one Sea-Doo took on water.

Mr. Letizia recorded 16 minutes of that conversation. Mr. Letizia ultimately paid \$1,200, which included amounts for the additional Sea-Doo and for fuel.

### ***Late return***

13. Mr. Kenyon says that because Mr. Letizia returned the Sea-Doos the next morning instead of the night before, Mr. Kenyon lost a \$300 rental. Mr. Letizia disputes this. On balance, I find Mr. Kenyon has not proven that anyone had reserved the Sea-Doos for the morning of July 23, such as with a booking confirmation. So, I find he is not entitled to the claimed \$300 in damages.
14. However, I agree with Mr. Kenyon that he had a contractual right to charge a late return fee. Although he did not specifically claim this remedy in the Dispute Notice, he did claim general losses from the late return, and Mr. Letizia had the opportunity to respond to Mr. Kenyon's assertion of the contractual right to impose late fees. So, I find there is no unfairness in awarding this remedy. The contract said Mr. Kenyon would charge late fees at \$50 per hour. Mr. Letizia did not dispute that he returned the Sea-Doos at 11 am. I have no evidence about when Mr. Kenyon's shop opened, so on a judgment basis, I find the 11 am return was 3 business hours late. I order Mr. Letizia to pay Mr. Kenyon \$150 in late fees.

### ***Damage***

15. I turn to the issue of alleged physical damage to the Sea-Doos. Photos show that one Sea-Doo has a chip in the "gel coat" and the other has a scratch. It is implicit in Mr. Kenyon's submissions that he thinks Mr. Letizia or his family caused the damage. Mr. Kenyon relies on two contractual terms. The first generally said Mr. Letizia will pay for any damage. The second said Mr. Letizia agrees that he has taken photos of any damage before taking the Sea-Doos and will send the photos to Mr. Kenyon immediately, and that any photos sent after the agreement is signed are inadmissible as proof of previous damage.

16. I find the contract does not mean that Mr. Kenyon's claim is successful simply because Mr. Letizia did not take photos before he signed the agreement. Mr. Kenyon must still prove on a balance of probabilities that Mr. Letizia damaged the Sea-Doos.
17. Mr. Letizia denies that he or his family damaged the Sea-Doos. He submitted some photos showing the Sea-Doos in operation but I find the photos inconclusive as they do not show all Sea-Doos at all angles with sufficient clarity. Mr. Letizia also notes that on the contract, there was a section titled "Post Damage" that has space to describe any damage, and space for a customer signature. Mr. Kenyon does not explain why this section was left blank. Further, when Mr. Letizia returned the Sea-Doos, the parties had a lengthy discussion about how one of the Sea-Doos took on water and what compensation Mr. Kenyon wanted for that, but Mr. Kenyon did not mention any chips or scratches. Finally, I agree with Mr. Letizia that 5 days passed before Mr. Kenyon mentioned damage in a text message. I find that during that week, Mr. Kenyon likely rented the Sea-Doos out to other people, which Mr. Kenyon does not deny.
18. Mr. Kenyon says he took the photos on July 25, 2022. The metadata indicates he took one photo on July 28 (which is consistent with the date he texted the photo to Mr. Letizia) and the other photo on August 1, 2022. Given the time that passed, I find the photos are insufficient to establish that Mr. Letizia damaged the Sea-Doos. Weighing Mr. Letizia's failure to take pre-rental photos against Mr. Kenyon's failure to note post-rental damage, I find Mr. Kenyon has not established that Mr. Letizia damaged the Sea-Doos. I also note that Mr. Kenyon provided no evidence of the cost to repair the chip and scratch, such as an invoice or estimate. I dismiss the claim for damages for the gel coat chip and the scratch.
19. I turn now to water damage. It is undisputed that at some point, either before the rental period began or during the rental period, the plug went missing from one of the Sea-Doos. On July 21, 2022, Mr. Letizia had the Sea-Doo towed to a local marina where marina staff undisputedly pumped water out of the engine compartment. Mr. Kenyon says it is impossible that the plug was out from the start of the rental period

or it would have been at the bottom of the lake before it was towed to the marina. He also says there was so much water in the engine that Mr. Letizia must have flipped the Sea-Doo upside down. He says the Sea-Doos are designed to keep water from entering the engine when a plug goes missing.

20. I find that the question of how long a Sea-Doo can stay afloat with a missing plug, and the extent to which a missing plug can cause water to enter the engine, are both technical issues that require expert evidence to prove. While I accept that Mr. Kenyon likely has significant experience with Sea-Doos and other personal watercraft, parties generally cannot act as their own expert because they are not neutral about the dispute's outcome. As there is no independent expert evidence here, I find Mr. Kenyon has not proved either that Mr. Letizia lost the plug or that he flipped the Sea-Doo upside down, causing water to enter it. In any event, Mr. Kenyon has not supported his claimed damages for draining and drying the engine or replacing the battery booster he says was damaged by water, such as with an invoice or receipt. I dismiss this aspect of Mr. Kenyon's claim.

### ***Other remedies***

21. The final aspect of Mr. Kenyon's claim is for providing a number of service and rescue trips during the rental period. I find there is nothing in the written agreement indicating that Mr. Letizia agreed to pay extra for these services. To the extent that the parties had an agreement about compensation for these services, it was an oral one. The parties agree that all Mr. Kenyon asked for was a pack of White Claw beverages for his troubles, and Mr. Letizia obliged. I find Mr. Letizia owes nothing more.
22. The *Court Order Interest Act* applies to the CRT. Mr. Kenyon is entitled to pre-judgment interest on the \$150 from July 23, 2022, to the date of this decision. This equals \$10.39.
23. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Kenyon only recovered a small portion of his claimed damages and paid \$150 in CRT

fees. Mr. Letizia paid \$50 in CRT fees to cancel a default decision and was substantially successful in defending the claim. In the circumstances, I make no order for reimbursement of CRT fees. Neither party claims dispute-related expenses.

## **ORDERS**

24. Within 14 days of the date of this order, I order Mr. Letizia to pay Mr. Kenyon a total of \$160.39, broken down as \$150 in damages and \$10.39 in pre-judgment interest under the *Court Order Interest Act*.
25. Mr. Kenyon is entitled to post-judgment interest, as applicable.
26. This is a validated decision and order. 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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Micah Carmody, Tribunal Member