



# Civil Resolution Tribunal

Date Issued: December 5, 2024

File: SC-2023-008741

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rhone v. Amazon.com.ca, Inc.*, 2024 BCCRT 1230

BETWEEN:

PETER RHONE

**APPLICANT**

AND:

AMAZON.COM.CA, INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This is a dispute about loss of access to Amazon accounts and related services.
2. The applicant, Peter Rhone, says the respondent, Amazon.com.ca, Inc., improperly withheld access to their accounts and related digital content. They seek \$1,898.23

for lost account credit, \$1,235.96 in gift cards, \$124.37 in business Prime membership fees and \$500 for lost access to digital content. They are self-represented.

3. Amazon says that it suspended Mr. Rhone's accounts because they engaged in fraudulent gift card redemption activity, in breach of its terms and conditions. Amazon is represented by a paralegal.

## **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). 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.
5. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. The parties in this dispute question each other's credibility, or whether they are telling the truth, about Mr. Rhone's gift card use. In *Downing v. Strata Plan VR2356*,<sup>1</sup> the court recognized that oral hearings are not necessarily required where credibility is at issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, I can assess breach of contract by assessing the documentary evidence provided. Further, neither party asked for an oral hearing. I also note the CRT's mandate includes proportionality and a speedy resolution of disputes. For these reasons, I decided that the benefit of an oral hearing did not outweigh the efficiency of a hearing by 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.

## ***Jurisdiction***

7. Amazon provided terms and conditions for purchase and use of gift cards on 4 of its websites: Amazon.ca, Amazon.com, Amazon.uk, and Amazon.de. Mr. Rhone had active accounts on all 4 websites. The terms of the Amazon.ca account stipulate that disputes will be resolved through arbitration by the American Arbitration Association, while the Amazon.de terms state that disputes must be resolved through the courts of Luxembourg. The terms for Amazon.com and Amazon.uk do not stipulate an avenue for resolving disputes but say that the terms and conditions will be interpreted according to the laws of the state of Washington or the Grand-Duchy of Luxembourg.
8. Amazon did not object to the CRT taking jurisdiction to hear this matter. Amazon did not raise what is known in law as an inconvenient forum objection and it has participated in the CRT process.
9. In the circumstances of this case, I find that the parties attorned or agreed to the CRT having jurisdiction over this dispute. Further, noting the reasoning in *Club Resorts Ltd. v. Van Breda*,<sup>2</sup> and the factors in section 11(2) of the *Court Jurisdiction and Proceedings Transfer Act*, in particular the convenience and expense for the parties, I find that there are sufficient connecting factors and territorial competence for the CRT to assume jurisdiction. I find that the CRT's jurisdiction under the CRTA permits me to decide this dispute.

## **ISSUE**

10. The issue in this dispute is whether Mr. Rhone is entitled to compensation for loss of access to their Amazon accounts.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Mr. Rhone, as the applicant, must prove their claims on a balance of probabilities. 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.

12. Mr. Rhone says they placed an order for an e-piano through Amazon.com and attempted to pay for it using the combined value of three gift cards. At that point, Amazon suspended Mr. Rhone's Amazon.ca, Amazon.com, Amazon.de and Amazon.uk accounts because of unusual payment activity. It asked Mr. Rhone to provide proof of ownership of the gift cards. Mr. Rhone says they provided this information, but their accounts remained suspended or closed. Mr. Rhone says that 4 days later, they were charged a \$91.43 USD fee for their business Prime membership. A few days later, Amazon processed a refund for a returned phone and applied a \$1,291.01 EUR credit to their Amazon.de account. Mr. Rhone says that their tablets lost access to digital content valued at \$500. Mr. Rhone brings this claim for the value of these items as well as \$915 USD in gift cards that Amazon would not permit them to spend. Mr. Rhone says that by suspending access to their accounts, Amazon is in breach of their contract.
13. Amazon says it suspended Mr. Rhone's accounts because Mr. Rhone breached Amazon's gift card terms and conditions by engaging in fraudulent gift card activity. Amazon says Mr. Rhone redeemed gift cards originating from over 900 distinct email addresses, a pattern Amazon characterizes as highly unusual. According to Amazon, the 900 gift cards redeemed by Mr. Rhone were sent to 400 different email addresses, a significant portion of which are linked to scam activity. Amazon says the FBI advised that one of the email addresses is known to be a scam email. Amazon says another email address associated with Mr. Rhone's account has all the hallmarks of an association with scam activity.
14. Amazon argues that Mr. Rhone cannot succeed in their claim for damages because this would violate the doctrine of *ex turpi causa*, which provides that an individual cannot seek a remedy in connection with an illegal act. Amazon says that Mr. Rhone purchased the phone, digital goods, and membership using fraudulently obtained funds. As such, they are non-refundable. Amazon also argues that Mr. Rhone has

not proved their losses because Mr. Rhone did not provide receipts for the gift card purchases, the phone purchase or the business Prime membership fee.

15. Amazon says the terms and conditions for using gift cards are clearly visible when a gift card is redeemed on its websites. The terms about fraud vary slightly for each website, as set out below.

- a) Amazon.com: “We reserve the right, without notice to you, to void Gift Cards (including as a component of your Amazon.com Balance) without a refund, suspend or terminate customer accounts, suspend or terminate the ability to use our services, cancel or limit orders and bill alternative forms of payment if we suspect that a Gift Card is obtained, used or applied to an Amazon.com account (or your Amazon.com Balance is applied to a purchase) fraudulently, unlawfully or otherwise in violation of these terms and conditions.”
- b) Amazon.ca: “We will have the right to void Gift Cards or any other component of your Amazon.ca Balance, close customer accounts and bill alternative forms of payment if we suspect that a Gift Card is obtained, used or applied to an Amazon.ca account (or your Amazon.ca Balance is applied to a purchase) fraudulently, unlawfully or otherwise in violation of these terms and conditions.”
- c) Amazon.de: “We reserve the right, to void Gift Cards without a refund, suspend or terminate customer accounts, suspend or terminate this agreement and the ability to use our services, cancel or limit orders and bill alternative forms of payment if a Gift Card is obtained, used, or applied to an account fraudulently, unlawfully or otherwise in violation of these terms and conditions or if a transaction, is being initiated without authorization, fraudulently, suspiciously or is otherwise unusual based on prior transaction activity.”
- d) Amazon.uk: “We will have the right to close customer accounts and take payment from alternative forms of payment if a fraudulently obtained Gift Card is redeemed and/or used to make purchases on Amazon.co.uk or any of its affiliated websites.”

16. Mr. Rhone does not dispute that the terms above appeared when they redeemed the gift cards but says that they did not agree to them. Amazon says the terms and conditions are binding because it took reasonable steps to bring them to the attention of gift card users. Amazon refers to this as a browse wrap agreement. The BC Supreme Court considered a browse wrap agreement in *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, and found it is enforceable as long as the consumer has the opportunity to read it before their use of the website can be considered acceptance of the terms and conditions.<sup>3</sup> In *Yang v. Li*, the BC Supreme Court found that a party who has not read the terms of a contract cannot complain that it differs from what they might have expected.<sup>4</sup> I find it was enough that Mr. Rhone had the opportunity to review the terms and conditions before using the gift cards. Mr. Rhone indicated their acceptance of those terms when they redeemed the cards.
17. I find, based on the above terms and conditions, Amazon had the right to suspend or close Mr. Rhone's accounts if it suspected fraudulent activity, regardless of whether Mr. Rhone engaged in fraud. It is not necessary for Amazon to establish that Mr. Rhone ever engaged in fraudulent activity, only that it had reason to suspect fraud in relation to the gift cards they used.
18. Amazon says that its compliance team found multiple indicators of fraudulent suspicious or otherwise unlawful activity associated with Mr. Rhone's account. Amazon provided a list of approximately 60 gift cards purchased by different email addresses and redeemed by Mr. Rhone in 2020, 2021 and 2022. The gift cards ranged in value from \$5 to \$50. Amazon describes a scam involving the use of a fake website to target Amazon customers and divert gift card funds from victims to scammers. While Amazon referenced communication with the FBI, it did not share copies of any related correspondence or reports.
19. Mr. Rhone denies involvement in any scam but does not deny that they used gift cards originating from many email addresses. Mr. Rhone explains that they purchased gift cards from Amazon directly as well as through retailers and resellers. Mr. Rhone says they also received gift cards as payment for their work.

20. On the evidence, I find that Amazon has not established that Mr. Rhone engaged in fraud. However, Amazon has established that it had reason to suspect fraud relating to Mr. Rhone's gift card use, given the high volume of gift cards Mr. Rhone redeemed that they did not purchase directly. Under the terms of its agreements with Mr. Rhone, I find Amazon had the right to suspend and cancel their accounts. So, I find that Amazon did not breach a contract with Mr. Rhone, and they are not entitled to damages.
21. Mr. Rhone did not provide evidence of the gift card or phone purchases, such as receipts, emails or messages from those who gave them gift cards. Mr. Rhone also did not explain how they value the digital content at \$500. So, even if I had found Amazon in breach of contract, I would have found these claims unproven and dismissed them on that basis.
22. I considered whether Mr. Rhone is entitled to a refund for their business Prime membership fee. Mr. Rhone provided a bank statement that shows a withdrawal from an account for "B Prime R Amzn De" 4 days after Amazon suspended their accounts. However, Mr. Rhone did not provide details such as the time period covered by the membership fee or the services it entitled them to. So, I find this claim unproven.
23. 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 dismiss Mr. Rhone's claim for reimbursement of CRT fees. While Amazon was successful, it paid no CRT fees.
24. In submissions, Amazon claims special costs. The court awards special costs when a party in a court action engages in reprehensible behaviour. Special costs are intended to fully indemnify the innocent party for their legal fees and other costs. Amazon says it should be awarded special costs because of Mr. Rhone's fraudulent conduct and to deter those involved in scams from bringing unsubstantiated and improper legal claims. As noted above, I find that Amazon has not established that Mr. Rhone engaged in fraud, so I make no award for special costs. Amazon did not claim other dispute-related expenses.

## ORDERS

25. I dismiss Mr. Rhone's claims and this dispute.

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Maria Montgomery, Tribunal Member

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<sup>1</sup> 2023 BCCA 100.

<sup>2</sup> 2012 SCC 17.

<sup>3</sup> 2011 BCSC 1196.

<sup>4</sup> 2024 BCSC 613, at paragraph 71.