



Civil Resolution Tribunal

Date Issued: February 27, 2024

File: SC-2023-002054

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shortts v. Keith*, 2024 BCCRT 188

B E T W E E N :

SHELLEY MARIE SHORTTS

APPLICANT

A N D :

SHERRY KEITH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about an e-bike. Shelley Marie Shortts and Sherry Keith are former friends who live in separate units in the same building. In August 2022 Ms. Shortts e-transferred money to Ms. Keith to purchase an e-bike. Ms. Shortts says the parties

agreed the e-bike belonged to her, but Ms. Keith would have custody of the e-bike for Ms. Keith's lifetime. Ms. Shortts says Ms. Keith breached the agreement by terminating it and claiming ownership of the e-bike.

2. In her Dispute Notice Ms. Shortts claimed \$2,000 as a return of the e-transfer, \$400 for the tax she says she is required to pay on the \$2,000 she withdrew from her RRSP for the transaction, and \$1,700 for the purchase price of the e-bike, for a total of \$4,100. She also asked Ms. Keith to return the e-bike, battery, and charger to her in safe and working condition. Ms. Keith has since returned the e-bike to Ms. Shortts, but Ms. Shortts says it is damaged. In her submissions, Ms. Shortts reduced the total amount of her claim to \$1,699.
3. Ms. Keith denies that the parties made an agreement. She says Ms. Shortts e-transferred her the money to purchase the e-bike as a gift. She says she does not owe Ms. Shortts anything.
4. Both parties are 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.
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 court.
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 Ms. Shortts is entitled to \$1,699 from Ms. Keith.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Shortts must prove her claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Ms. Shortts' claims.
11. On August 14, 2022, Ms. Shortts e-transferred \$1,999 to Ms. Keith. On the same day, Ms. Keith paid \$1,573.95 for an e-bike online. On February 23, 2023, Ms. Keith gave the e-bike to Ms. Shortts.
12. Ms. Shortts says the parties made a verbal agreement in August 2022 under which she provided \$2,000 to Ms. Keith to purchase a new e-bike, lock, and helmet of Ms. Keith's choice. Ms. Shortts says that under the agreement she owned the e-bike for as long as she was alive, but Ms. Keith had lifelong custody of it. She says the parties agreed that if Ms. Keith ever decided she no longer wanted custody of the e-bike, the contract would end, and Ms. Keith would immediately return the e-bike to Ms. Shortts. Ms. Shortts says that several months after Ms. Keith purchased the e-bike, she left Ms. Shortts a note stating that the contract was terminated, and she was taking ownership of the e-bike. Ms. Shortts did not submit the note as evidence.

13. Ms. Shortts says when she received the e-bike from Ms. Keith in February 2023 it was damaged, though she does not specify the extent or location of the alleged damage. She submitted photos showing the alleged damage, but I cannot see any damage in the photos. Ms. Shortts says she has since sold the e-bike for \$500. She has reduced her claim in this dispute to \$1,699. She says this is for the return of the \$1,999 e-transfer, plus \$200 for the tax she says she is required to pay for withdrawing the \$1,999 from her RRSP, less the \$500 she says she received for selling the e-bike.
14. Ms. Keith denies that the parties made an agreement about the e-bike, or that she would repay Ms. Shortts any amount of the e-transfer. Ms. Keith says Ms. Shortts e-transferred the money as a gift to purchase the e-bike. Ms. Keith says she offered Ms. Shortts money or a payment plan, but Ms. Shortts refused and told her it was a gift. To support her position Ms. Keith submitted a lengthy text exchange between the parties on August 8, 2022 in which Ms. Shortts makes at least 3 references to giving Ms. Keith the e-bike as a gift. Ms. Keith also submitted the message Ms. Shortts included with the e-transfer which said, “Happy Xmas and birthday for the rest of our lives!” Ms. Keith says this proves the e-bike was a gift. Ms. Shortts does not specifically address any of this evidence.
15. The law presumes bargains rather than gifts. This means that even though Ms. Shortts bears the burden of proving her claims, Ms. Keith must prove that Ms. Shortts intended the e-transfer as a gift (see *Pecore v. Pecore*, 2007 SCC 17 at paragraph 24, and *Proznik and Smith v. Proznik*, 2011 BCPC 0300 at paragraphs 22 to 28).
16. For the following reasons, I find the evidence supports Ms. Keith’s version of events, and I find Ms. Shortts intended the e-transfer as a gift. I find the text messages in evidence are persuasive, particularly since Ms. Shortts did not address them at all in her submissions. On the contrary, there is no documentary evidence to support Ms. Shortts’ version of events. Even if the parties did make the agreement as Ms. Shortts alleges, Ms. Keith undisputedly returned the e-bike to Ms. Shortts, and I find the

photos Ms. Shortts submitted are insufficient to establish that the e-bike was damaged in any way. I find Ms. Shortts has failed to prove her claim, and I dismiss it.

17. 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. Neither of the parties paid any CRT fees. Since Ms. Shortts was unsuccessful, I find she is not entitled to reimbursement of the \$157.50 she claims as a dispute-related expense for hiring a process server. Ms. Keith did not claim any dispute-related expenses.

ORDER

18. I dismiss Ms. Shortts' claims and this dispute.

Sarah Orr, Tribunal Member