

What is Small Claims Court?

Small Claims Court Guide #1

In small claims court, people can settle their differences in cases worth anywhere up to \$35,000. It has less formal and less complicated rules and procedures than Supreme Court. For example, the forms you use in small claims court are the “fill-in-the-blank” type.

Effective June 1, 2017, the [Civil Resolution Tribunal](#) (CRT), established under the [Civil Resolution Tribunal Act](#), has jurisdiction to resolve certain claims of \$5,000 and under. These claims must go through the CRT before going to Provincial small claims court. However, Provincial small claims court can receive a small claim if one or more of the following conditions apply:

- the tribunal has made a final decision in relation to the claim, and a party has filed a notice of objection with the CRT under section 56.1 [a notice of objection renders the CRT decision non-binding];
- the tribunal does not have jurisdiction to adjudicate the claim;
- the tribunal refuses to resolve the claim;
- the Provincial Court orders that the tribunal not adjudicate the claim;
- the person is in a class of persons exempted by regulation.

If you are thinking of making a claim for over \$5,000 in small claims court or making a claim if proceedings previously initiated before the Civil Resolution Tribunal (CRT), or if you're already involved in a case, this guide is for you. It answers questions about the court and it describes what happens in an ordinary small claims court case. Even if you do hire a lawyer to represent you, it is helpful to know what to expect.

Do I have to know legal language?

No. There aren't many legal words you will have to know to find your way around small claims court, but there are a few. Here are the main ones:

- The **claimant** is the person who makes a claim in small claims court or the initiating party who made the initial request in the CRT with respect to a dispute.
- The **notice of claim** is the form the claimant uses to make the claim.
- The **defendant** is the person who is being sued or the person at the CRT who was required to make a response - the one the claim is made against.
- The **reply** is the form the defendant uses to answer the notice of claim.
- The **filing party** is the person who completes and files a notice of civil resolution tribunal claim in small claims court.
- The **Notice of Civil Resolution Tribunal Claim** is the form the filing party uses to bring a claim to Provincial small claims court that was previously at the CRT.
- The **response** is the form filed by the responding party in the CRT and continued as a reply when filed with the notice of civil resolution tribunal claim.
- **Serving** a document means getting it to another person in whatever way the law requires.

What kinds of cases go to small claims court?

As you'd expect, the cases that come to small claims court, which is part of the Provincial Court of British Columbia, involve smaller amounts of money than in Supreme Court. The highest amount that the claimant can sue for is \$35,000. This includes all claims listed on the notice of claim or filed with the notice of Civil Resolution Tribunal claim, no matter how many defendants there are, and it includes the value of any goods that the claimant is asking for.

It does not include any interest or expenses that the claimant might be entitled to. The expenses that anyone can claim in small claims court are quite limited, and, in many cases, amount to no more than the filing fee and the cost of document service.

There are some kinds of cases that cannot be handled in small claims court, no matter how little money is involved. The resolution of certain disputes between residential landlords and tenants, as well as libel and slander suits and cases involving the title to land, cannot be tried in small claims court.

If you are trying to enforce an order from the BC Residential Tenancy Branch (RTB), please first consult their [website](#). This website explains the steps to take to enforce a monetary order, including the final step of enforcement through small claims court. If you are enforcing an order from the RTB or the Civil Resolution Tribunal, it is not necessary to begin a new claim with a notice of claim or notice of civil resolution tribunal claim. You may want to review the small claims court guide #7: Getting Results.

How to use this guide:

On the following pages, you will find a sample small claims court case initiated in Provincial small claims court that outlines the steps involved in the small claims court process. For more information about any of the steps along the way, see the other guides in this series. They are listed at the end of this guide. For answers to particular problems or questions, read the small claims court rules or seek legal advice.

Note: From time to time, the Ministry of Justice and the Provincial Court run pilot projects to explore ways to improve the small claims court. If the registry where your case is filed is running a pilot project, it might not follow the process in this guide. You can find more information about the pilots underway on the Government of BC (www.gov.bc.ca) website under [Small Claims Court](#).

Small Claims Court Sample Case

The Facts: Lois loaned \$10,000 to Norman. He agreed to pay it back in six months. The due date arrived and he paid her \$500 but that is all. She has tried writing and calling him, but he avoids her. Finally, she decides her only choice is to sue him in small claims court.

Step 1: The Notice of Claim

The first thing Lois has to do is get a notice of claim form from the [Provincial small claims court registry](#) near her, from the Government of BC website under [Small Claims Forms](#) or from a [Service BC office](#) and fill it out. The instructions are included with the form.

Lois might wish to use the online [filing assistant](#) on the Court Services Online website to help her complete the form. The filing assistant will prompt her through a series of questions that will help her complete the required forms. The results of her answers will be put in the form. She could then print it. She could also print the form and complete it manually.

Then she takes the form to the registry where a person behind the counter checks it for completion. She pays the filing fee, and the clerk gives her back several copies of the form and a blank reply form. This is called "filing" the notice of claim.

The blank reply form and one of the copies of the notice of claim is for Norman. This will tell him what the lawsuit is about and will give him the form he needs to answer it. Lois knows that he is avoiding her, so she asks a friend to take the papers to Norman. If Norman lives in BC, he has 14 days from the day he received the papers, to file his reply. If he resides outside of BC, he will have 30 days to file his reply.

Step 2: The Reply

When Norman receives the notice of claim, he is upset. He does owe Lois money, but it was supposed to be a no-interest loan and now she says he agreed to pay 10 per cent interest. And \$700 of the money she gave him was payment for repairs he did to her car. He has already repaid \$500, so he figures he still owes her \$8,800. He would pay that now if he could, he admits that he owes her \$8,800 but says \$700 of the money Lois gave him was payment for repairs he did to her car. He denies that he owes any interest and asks for a payment schedule. He says he could pay \$100 a month for until the \$8,800 is paid.

Norman takes the completed form to the small claims court registry where Lois filed the notice of claim (the address was on the form.) The staff checks the form and accepts it for filing. There is a fee for filing the reply.

The registry now mails a copy of Norman's reply to Lois. Norman doesn't have to give it to her personally, because on her notice of claim she had to give her own address where she could be reached by mail.

Step 3: The Settlement Conference(s)*

The next thing that happens is that Lois and Norman both get a notice in the mail telling them to come to a [settlement conference](#). At the settlement conference, the judge looks at the notice of claim, and the reply, and asks Lois and Norman a few questions. The judge tries to see if there is any chance the two can agree. Lois eventually agrees that the loan was supposed to be interest-free. But they can't agree about the \$700 for car repairs. Lois also isn't happy about waiting to get back \$8,800.

The judge can make a payment order right then for the \$8,800. There will have to be a trial about the \$700 difference. The judge talks to them about what sort of evidence each of them will need to bring.

If the case is going to take more than half a day, they agree on a date for a trial preparation settlement conference (essentially a second settlement conference). At the trial preparation settlement conference, the judge helps Lois and Norman further prepare their case for trial. The judge tries again to see if the two can agree. If not, the judge makes sure they are ready for trial and he sets the final trial time estimate. If the case will take less than half a day, a trial preparation settlement conference is not required and they agree on a date for trial.

*Settlement Conferences do not occur in all circumstances. For more details regarding Settlement Conferences, review the Small Claims Rules on the BC Laws website at: www.bclaws.ca. You may also wish to review the small claims court guide #6: Getting Ready for Court.

Step 4: The Trial

At the trial, the judge lets Lois and Norman tell their own stories and then reply to what the other person says and call witnesses. The judge accepts the evidence of Lois' mechanic that Norman did not do the work he said he did. The judge's decision is that Norman must pay Lois the \$700 remaining on the loan.

Then the judge asks Norman how he plans to pay the judgment. Norman says that \$100 a month is still all he can afford. Lois says she doesn't believe that and she needs the money sooner. They agree to come back later for a payment hearing.

Step 5: The Payment Hearing

At the payment hearing, the judge asks Norman questions about his finances. Lois gets to ask some questions too. Finally, the judge orders that Norman pay \$250 a month plus \$500 in April, when he receives his income tax return.

Frequently Asked Questions

What if the defendant ignores the whole thing?

This often happens. A person receives a notice of claim and just does nothing. If that happened to Lois, she would have to go back to the small claims court registry after the time limit for Norman's reply had passed. If she could prove that Norman had been properly served with the papers, she would get an order for payment against Norman for the amount she was claiming and pay the filing fee for this order. This is called a default order. She could then enforce that order just as if it had been made by a judge following a trial.

What will it cost me for my case?

That will depend on how you handle your case, how the defendant responds to your claim and how you choose to proceed if you win your case. There are fees set by the small claims rules for registry services and sheriff services. You can review the list of the fees online by reading the [Small Claims Rules](#) on the BC Laws website.

In addition to the set fees, there may be expenses and interest added on to the total owing. If any costs are to be added to anyone's case, the judge or registry staff will make the decision. In most situations, the fees and expenses can be added to the total amount the unsuccessful party has to pay. This means the costs the defendant had to pay may be charged against the claimant if the defendant is successful with a counterclaim.

If you do end up hiring a lawyer to represent you, the fees you pay to the lawyer can't be added to your judgment. Anyone who cannot afford the registry fees may make an application to the registrar to be exempted from paying the fees.

If I win my case, am I guaranteed to get my money?

Unfortunately, no. The court can give you tools you can use to collect your money - such as a payment hearing or a garnishing order. In the most extreme cases, when someone deliberately ignores a court order, a judge can send a debtor to jail. But some people will not pay and some cannot. It is frustrating to spend time and money to prove a claim in court and then still be unable to collect what is owing to you. If you are thinking about making a claim in small claims court - or in any court, for that matter - you should first consider what your chances are of collecting, if you should win.

What if I don't like the judge's decision?

A small claims court decision can be appealed to the Supreme Court. But an appeal will cost money, take time and the result might not be any different.

How can I get more information?

This is one in a series of guides available. The titles in the series are:

1. What is Small Claims Court
2. Making a Claim for Proceedings initiated in Small Claims Court
3. Making a Claim for Proceedings initiated Before Civil Resolution Tribunal
4. Replying to a Claim
5. Serving Documents
6. Getting Ready for Court
7. Getting Results
8. Mediation for Claims between \$10,000 and \$35,000

The people behind the counter at any small claims registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer many of your questions about small claims court procedures.

To contact a court registry, consult your telephone directory under “Court Services” in the provincial government blue pages in the phone book or search for Courthouse Locations on the BC Government website (www.gov.bc.ca)

This guide provides an overview of the significant provisions of the *Small Claims Act* and the Small Claims Rules. It is not intended as a substitute for the act or the rules, which should be examined for specific information.

You can find links to the *Small Claims Act* and rules at www.gov.bc.ca/smallclaims.

This information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

You may also wish to consult Clicklaw at www.clicklaw.bc.ca for additional legal information.

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