

# Replying to a Claim

## Small Claims Court Guide #4

It is important that you have read Small Claims Court guide #1, What is Small Claims Court?, prior to reading this guide.

If someone is suing you in small claims court, you will receive a notice of claim or a notice of Civil Resolution Tribunal claim. For most people, this raises a lot of questions. This guide will answer some of those questions and give you information that may help with some of the decisions you'll have to make.

If you decide to oppose the claim, the guide will tell you how. If you simply want a reasonable payment schedule, it will tell you how to arrange that.

If you are the person making the claim and the person you are suing makes a counterclaim against you, this guide may provide help with some of the decisions you'll have to make.

Read the guide first and then decide what action you want to take.

For more information about the small claims process, see the other publications in this series, which are listed at the end of this guide. For answers to particular problems or questions, read the small claims court rules on the BC Laws website at [www.bclaws.ca](http://www.bclaws.ca) or seek legal advice.

**Note: From time to time, the Ministry of Attorney General and the Provincial Court run pilot projects to explore ways to improve 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](http://www.gov.bc.ca)) website by searching for [Small Claims Court](#).**

### **1. I have received a notice of claim or a notice of Civil Resolution Tribunal claim. What if I just do nothing?**

The one thing you should **NOT** do is ignore the claim. If you do nothing, the other party can get a judgment against you, just as if there had been a trial.

### **2. What if I want to pay the claim?**

You may agree that you owe what is claimed. If that's the case, you can pay it directly to the other party. Or you may contact the other party to make some arrangements that you can both live with and the other party can withdraw the claim. Either way, that will end the lawsuit.

Alternatively, if you have reached an agreement, you may both sign a consent order and file it with the registry or the other party may file a payment order with the registry. Nothing further would happen with the lawsuit, unless the terms of the agreement were not followed.

### **3. What if I don't agree with the claim?**

If you were served with a notice of claim and if you and the claimant cannot agree, either on the claim itself or on the terms of payment, there are several things you can do:

- If you do owe what is claimed, but can't pay it right away and can't agree with the claimant on a payment schedule, you can ask the court to set a schedule of payments that you can handle.
- If you don't agree with the claim, you can deny all or part of what the claimant says.
- You can make a claim against the claimant.

Whatever you decide, the reply is the form you will use.

If you feel someone else is responsible for the claimant's claim, you may add this person as a party by filing a Third Party Notice form.

If you were served with a notice of Civil Resolution Tribunal claim:

If a response was filed and served in the Civil Resolution Tribunal (CRT), and is attached to the notice of Civil Resolution Tribunal claim, no reply is required to be filed in the Provincial Court. The response to the claim in the CRT continues as the reply in Provincial Court. This may be a response to a claim, counterclaim or third party notice.

If you do have to file a reply to the notice of Civil Resolution Tribunal claim, you can do any one or more of the options above for a defendant who was served with the notice of claim, except you cannot make a claim against the claimant or add another party without the permission of a judge. Again, whatever you decide, the reply is the form you will use.

#### **4. What is a reply?**

The reply is your answer to the notice of claim or notice of Civil Resolution Tribunal claim. It is a special form you will use to tell:

- what you disagree with in the notice, and why;
- what, if anything, you agree with;
- what, if anything, you are claiming against the party; and
- whether you want the court to set a payment schedule.

#### **5. How much time do I have to file my reply?**

If you were served your notice of claim or notice of Civil Resolution Tribunal claim in British Columbia, you have 14 days from that date to file your reply. If you were served your notice of claim/notice of Civil Resolution Tribunal claim outside the province, you have 30 days to reply.

If you did not file your reply and the time limit to do so has passed, you can still ask the court for permission to file a reply after the time limit but you will have to have a good reason for your delay.

#### **6. Where do I get a reply form?**

When the claimant gave or sent you the notice of claim, a blank reply form should have been included. If the claimant gave you a notice of Civil Resolution Tribunal claim, a blank reply form would have been included to parties who did not respond to the claim in the CRT. If you need a blank reply form, or if you need another form, you can get them online on the Government of BC website under [Small Claims forms](#) or at any [provincial small claims registry](#). A [Service BC](#) office may have the forms.

#### **7. How do I fill out the reply?**

The small claims court forms are specially designed to be used by people who are not lawyers. You may find all the help you need on the sheet that is attached to the front of the form. You may also wish to use the online [Filing Assistant](#), which will prompt you through a series of questions that will help you complete the reply form. You can find the Filing Assistant on the [Court Services Online](#) website. More information about completing the form is included below. We'll look at each section in the reply form and go through it step-by-step.

**TO:** This is where you put the name of the claimant. Simply copy the claimant's name, address and telephone number from the notice of claim/notice of Civil Resolution Tribunal claim.

**FROM:** This is where you put your own name, address and telephone number. Copy your name as it appears on the notice of claim/notice of Civil Resolution Tribunal claim.

The address given on the notice may not be the right one. Be sure the address you give is correct because

this is where the registry will send any further notices or information to you. If your address changes at any time, be sure to notify the small claims court registry and all other parties to the lawsuit by completing a [notice of change of address](#) form. Otherwise, they will continue to send mail to your old address and you won't know what is happening in your case.

**DISPUTE:** This is where you tell what you disagree with in the claim. You should take some care with this part.

Look at the "How Much" section of the claim. If the claim has more than one part - a, b, c, and so on - then you should reply to each part separately, using the same letters.

If there is anything in the claim that you agree with, be sure to include that here. Otherwise, the claimant might have to spend money to prove it in court. The judge could order you to pay the claimant back for money that was wasted proving something that was never really an issue.

Try to be brief. You may have other quarrels with the claimant, but don't include them here. Stick to only those items that appear in the claim under "How Much". Don't worry about using "legal language". Just make your point in your own words.

**Example 1 – Dispute**

*You are a roofer. You put a roof on an addition to a customer's house and now the customer is suing you. They say the roof leaked and they had to pay \$1,250 to fix it. In the "How Much" section they say:*

- |                                   |                   |
|-----------------------------------|-------------------|
| <i>a) Cost of replacing chair</i> | <i>\$479.00</i>   |
| <i>b) Cost of cleaning carpet</i> | <i>\$135.00</i>   |
| <i>c) Cost of repairing roof</i>  | <i>\$1,250.00</i> |

*You might say, in your "Dispute" section:*

- a) I don't know about any chair in the area that could have been damaged by a leak from the roof.*
- b) There was only a small rug in the room and it would not cost \$135 to clean it.*
- c) If there was a leak at all, it was caused by faulty shingles.*

**AGREEMENT WITH THE CLAIM:** Most of us want to pay what we owe. Often the reason we don't is that we simply can't. Or we can't pay it right away. Sometimes installment payments can be the answer. Or a delayed payment date might satisfy both sides.

If you want to pay the claim but you need some time - and you can't come to an agreement with the claimant - fill in this space with the sort of payment arrangements you want to make.

**Example 2 – Agreement with the Claim**

*Say you are the roofer in Example 1. You admit that you owe the \$1,250, but work has been slow lately and you have a lot of other obligations. You might say this: "I will pay \$300 a month, on the first of each month, starting in June 2014 until August 2014, and \$350 on September 1, 2014."*

**Example 3 – Agreement with the Claim**

*Or, if you were due to be paid for a big job in July, you might say, "I will pay \$1,250 before September 1, 2014."*

**COUNTERCLAIM:**

(Information in this section does not apply to a defendant where the proceeding was started by a notice of Civil Resolution Tribunal claim, unless the defendant has permission of a judge to make a claim against against the claimant.)

If you have a claim to make against the claimant, this is where it goes. For example, if the roofer in Example 1 hadn't been paid for the work, he might make a counterclaim for the amount owing on the invoice. A counterclaim is just another claim, like the one in the notice of claim, except that it is made by the defendant, against the claimant. It is important to correctly identify who you are suing.

For more information about making a counterclaim, read *Guide #2: Making a Claim for Proceedings Initiated in Small Claims Court* and *Guide #3: Making a Claim for Proceedings Previously Initiated Before Civil Resolution Tribunal*. These are available online at the Government of BC website under [Small Claims How-to-Guides](#). Your [ServiceBC office](#) may also have the guide.

**HOW MUCH:** This is where you say what you are claiming in your counterclaim. Again, look at guides #2: and #3 for more information.

## **8. What do I do with my reply after I've filled it out?**

The next step is to file the reply with the court. You do that by taking or mailing it to the small claims registry. The address will be on the notice of claim or notice of Civil Resolution Tribunal claim you received. If you have completed the reply form online, make sure you print and file it at the registry.

When your reply is filed, you will be asked to pay a filing fee unless you have agreed to pay the full claim. If you have set out a counterclaim there will be an additional fee. The fee for filing a counterclaim will depend on the amount of the counterclaim. Information about fees can be found on the Ministry of Justice website ([www.gov.bc.ca/justice/](http://www.gov.bc.ca/justice/)) under [Courthouse Services](#). You may pay by cash, personal or company cheque, certified cheque, money order or bank draft, payable to the Minister of Finance.

## **9. What happens next?**

Once the registry has accepted your reply form, they will send a copy to each of the other parties in the case (usually there is only the claimant).

If you had agreed to pay all or part of the claim, the claimant may contact you to sign a consent order setting out the terms for payment or the claimant might file a payment order at the court registry.

If the claimant doesn't agree with your proposed payment schedule, you can ask for a payment hearing or the claimant may summons you to a payment hearing so that the payment schedule can be set by the court. You can read more about payment hearings in *Guide #7: Getting Results*.

### **If the Claim was Initiated in Small Claims Court.**

If your offer is not acceptable to the claimant, a settlement conference is usually the next step. You will receive a notice in the mail, telling you where and when it will be held and you must attend. You can read more about the settlement conference in *Guide #6: Getting Ready for Court*.

The judge at the settlement conference will discuss with both of you the possibility of settling the claim. If you have asked in your reply for a payment schedule, that will be discussed at the settlement conference.

### **If the Claim is Continued from the CRT:**

If your offer is not acceptable to the claimant, the next step is for the claimant to prepare and file a certificate of compliance.

The certificate of compliance is a document used to tell the court and each other party that the claimant has complied with the court rules and that his or her case is ready to continue. The certificate of compliance must be filed within six months after the claimant served the notice of Civil Resolution Tribunal claim on all other parties and before a settlement conference or trial conference is held. Then, within 14 days of filing the certificate of compliance, the filing party must serve a copy of the certificate and copies of all attached documents on each of the other parties. Once the certificate of compliance has been filed, the registry will set a date for a settlement conference or trial conference.

Remember that at any stage you are always free to try to work out some agreement with the claimant, which will put an end to the lawsuit.

## **10. What if I think there is someone else who should pay?**

(Information in this section does not apply to a defendant where the proceeding was started by a notice of Civil

Resolution Tribunal claim, unless the defendant has permission of a judge to make a claim against another person. However, if a claim was made against a third party in the CRT and filed with the notice of Civil Resolution Tribunal claim, that claim continues.)

It may be that there is someone else who should be responsible for paying the claim.

This is called a "third party claim". If you have a third party claim, you will fill out the form and file it in the registry, just as you did with your reply. There is a fee for filing a third party notice.

**Example 4 – I think someone else should pay**

*The roofer in the earlier example might feel that if the roof does leak, it must be because the shingles were faulty. In that case, he might issue a third party notice against the supplier of the shingles. He can say, in effect, "I don't agree that there is anything wrong with the roofing job but if there is, then it is the shingle supplier who should pay you, not me."*

Then you have to let the third party know about your claim. You do this by serving the third party with these documents:

- a copy of the third party notice;
- a copy of the notice of claim;
- a copy of your reply;
- a copy of any settlement conference, mediation session, trial conference or trial, if one has been issued;
- a blank reply form.

A third party notice must be served in the same way as a notice of claim. For more information about service, see *Guide #5: Serving Documents*.

## 11. 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                                                | 5. Serving Documents                                  |
| 2. Making a Claim for Proceedings initiated in Small Claims Court            | 6. Getting Ready for Court                            |
| 3. Making a Claim for Proceedings initiated Before Civil Resolution Tribunal | 7. Getting Results                                    |
| 4. Replying to a Claim                                                       | 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](http://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](http://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](http://www.clicklaw.bc.ca) for additional legal information.

Provided by the Ministry of Attorney General