



# Civil Resolution Tribunal

Date Issued: April 23, 2018

File: SC-2017-003185

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. Super Vacation*, 2018 BCCRT 149

**BETWEEN:**

Liqiang Chen

**APPLICANT**

**AND:**

Super Vacation

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Angus M. Gunn

### INTRODUCTION

1. In April 2017 two of the applicant's friends intended to visit British Columbia and asked him to book a tour for them of Victoria, British Columbia. The applicant did so though the respondent Super Vacation. The tour was booked six days in advance of departure and paid for four days in advance of departure. Unfortunately, the applicant's friends had a change in plans and could not take the

tour. The applicant contacted the respondent three days before the tour departure date and tried to cancel the reservation.

2. The respondent suggested that the applicant substitute different guests for the tour, but the applicant could not find any substitutes. He asked that the trip be cancelled that he be refunded the amount he paid the previous day.
3. The respondent allowed the applicant to cancel the reservation, but refused to refund the purchase price. The respondent emphasized that that the tour was sold on the term and condition that no cancellations, amendments, or refunds could be made within 14 days of departure.
4. The applicant says it is “inequitable”, “deceptive, confusing, and harsh” for the respondent to apply the 14-day cancellation policy to a booking made fewer than 14 days before departure. He asks that the respondent be ordered to refund his purchase price, to reimburse his fees with the Civil Resolution Tribunal (tribunal), and to provide a formal apology.
5. The issue is whether the respondent is entitled to rely on its 14-day cancellation policy, or whether the applicant is entitled to a recover the amount he paid.

## **JURISDICTION AND PROCEDURE**

6. These are the tribunal’s formal written reasons. The tribunal has jurisdiction over strata property claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (the “Act”). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Neither party asked for a hearing other than in writing. I decided to hear this dispute through

written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.
10. Both parties are self-represented in this proceeding.

## **ISSUES**

11. The issues in this dispute are whether the applicant is entitled:
  - a. to a refund of the amount paid for the tour?
  - b. to recover the tribunal fees paid in this matter?
  - c. to a formal apology?

## **EVIDENCE AND ANALYSIS**

12. The applicant bears the burden of proof, on a balance of probabilities. The parties provided documentary evidence in support of their respective cases. That evidence establishes the following.

### Applicant Books Victoria Trip

13. One of the applicant's friends in China planned to visit Canada with her son in June 2011. The friend asked the applicant to book a one-day trip from Vancouver to Victoria for her and her son.
14. The respondent sells tour packages for various destinations, including a Victoria One Day Tour. The respondent publishes a descriptive product information flyer for the tour, which includes the tour itinerary and pricing. It also describes the terms and conditions applicable to the tour. They include the following: "Cancellation/Amendment: No refund/changes within 14-days prior to departure date. No partial refund on any unused services provided in the itinerary." The flyer asks "[p]lease provide passport names when booking the Seaplane. Once ticket has been issued, no changes / exchange / cancellation can be made." There was no evidence that the applicant had seen this flyer before it was introduced into evidence in this case.
15. On June 11, 2011, the applicant contacted the respondent and booked a one-day tour of Victoria for two people on June 17, 2011. The trip from Vancouver to Victoria was to be via tour bus and ferry, and the return trip was to be via seaplane.
16. On June 13, 2017, the respondent emailed the applicant an invoice for the cost of the tour: \$687.00. The covering email stated "Thanks for your booking. Please find attached invoice here. Please make online payment here prior to payment deadline stated. ... Your tour confirmation will arrive shortly after full payment is received." The attached invoice showed a tour cost of \$232.00 plus GST, a meal cost of \$28.00 plus GST, and a return seaplane cost of \$394.28 plus GST. The invoice indicated that "[p]ayment must be received within TODAY, or tour will be cancelled without notice." The invoice also stated "[n]o refund if cancel within 14 days prior to departure."
17. On June 13, 2017, the applicant paid the invoice online with his credit card on the ePayment page on the respondent's website. Before the payment could be

processed, the applicant had to click on a button to indicate that “I have read & understood” the terms and conditions of payment. Those terms included the following:

- “No refund within 14-day prior to departure date. No partial refund on any unused services.”
- “Any cancellation must be made in writing by fax or email to [the respondent].”

18. Upon payment being made, the respondent sent the applicant a “tour confirmation” sheet that stated in part “\*\*\* SEAPLANE is 100% NON-REFUNDABLE / NON-TRANSFERABLE / NON-CHANGEABLE \*\*\*”. The sheet also referred to a specific Harbour Air flight (YYJ to Downtown Vancouver), a specific number (226), an estimated departure time (18:30PM), an estimated arrival time (19:05PM), and what appears to be a purchase confirmation code (CFM 7799003).

#### Applicant Cancels Victoria Trip

19. On June 14, 2017, the applicant’s friend indicated that one of the guests’ travel visa had been cancelled and that she and her son could not come to Vancouver. The applicant immediately contacted the respondent and asked to cancel the Victoria trip. The respondent’s staff informed the applicant that their cancellation policy meant that they could not issue a refund for the booking, but suggested that he substitute two other guests to join the tour. The respondent described this as a gesture of goodwill.
20. During the telephone call, the respondent’s staff also stated that under the respondent’s agreement with Harbour Air the respondent cannot obtain refunds for cancelled guest reservations.
21. On June 16, 2017, the respondent emailed the applicant, stating that “[i]t’s unfortunate to hear that your friends may not be able to participate [in] the Victoria 1-day tour on Jun 17th.” The respondent asked the applicant to confirm his

decision to cancel the reservation. The respondent added that “[w]e would be more than happy to assist you with this matter. If you have other individuals to substitute the seats, we can make this change for you at free of charge. Please kindly confirm and provide information to us no later than 18:00 on Jun 16th.” The email concluded by stating that “seaplane cannot be refunded, exchanged and amended once payment is made. Thank you for your understanding.”

22. The applicant did not answer the respondent’s email of June 16, 2017. One of the respondent’s representatives contacted the applicant by telephone, who indicated that he could not find two other people to join the tour. He declined the substitution offer.
23. The respondent held the applicant’s reservation until June 16, 2017. When the trip departed on June 17, 2017, the respondent has not be-sold seats that the applicant had booked.

#### Applicant’s Key Submissions

24. The applicant submits that the respondent’s 14-day cancellation policy is “inequitable”, “deceptive, confusing and harsh” when it is applied to a booking made fewer than 14 days before departure. The applicant argues that this policy does not afford any effective cancellation right at all. The applicant maintains that it is deceptive for the respondent to state that it has “policy” of allowing guests to cancel trips without making it clear that there is no right to cancel bookings made 14 days or fewer before departure. The applicant objects that the respondent has not treated him fairly or honestly and has chosen to ignore its own words.
25. The applicant refers to paragraph 8(e) of the *Business Practices and Consumer Protection Act*,<sup>1</sup> which in subsection 9(1) states that “[a] supplier must not commit or engage in an unconscionable act or practice in respect of a consumer transaction.” Subsection 8(2) states that, in determining whether an act or practice is unconscionable, a court must consider all of the surrounding circumstances of

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<sup>1</sup> S.B.C. 2004, c. 2.

which the supplier knew or ought to have known.” The circumstances that a court must consider include “that the terms or conditions on, or subject to, which the consumer entered into the consumer transaction were so harsh or adverse to the consumer as to be inequitable” (see paragraph 8(3)(e)). The applicant submits that the respondent’s online ePayment agreement “could be inequitable.”

26. The applicant also argues that the respondent’s cancellation policy does not apply to the Harbour Air booking. He checked with Harbour Air and understands that its cancellation policy provides that bookings are refundable if cancelled more than 24 hours before departure. Because he gave more than 24 hours’ cancellation notice to the respondent, the applicant argues that it is possible the respondent cancelled with Harbour Air and “pocketed the airfare part of the money.”
27. The applicant argues that because the respondent advertises the Victoria One-Day Tour as a routine, daily trip from May through September, and because the cancellation occurred during high season, the respondent suffered no loss from the cancellation and therefore he should be able to obtain a refund for the cancelled booking. The applicant asked the respondent to provide evidence as to whether and when the Harbour Air tickets were purchased and issued, but the respondent did not provide that information. The applicant describes the respondent as not treating him equitably and as refusing to provide key evidence.
28. The applicant seeks a refund of \$887.00 on his prepaid booking, reimbursement for a total of \$125.00 in fees paid to the tribunal, and an order that the respondent provide him with a formal apology.

#### Respondent’s Key Submissions

29. The respondent emphasizes that its cancellation policies were made available to the general public (and the applicant specifically) in multiple ways before the applicant confirmed and paid for the booking: the respondent’s marketing materials, the invoice for the booking, and the online ePayment page for the booking.

30. The respondent states that the applicant's inquiry to cancel his booking came three days before departure, and that while the applicant could certainly cancel the booking at that point he was not entitled to a refund. The respondent says that it did its best to accommodate the applicant by offering to let him to substitute different guests, but regrettably the applicant was unable to take advantage of the offer. The respondent asks that the cancellation policies to which the applicant agreed be respected and applied.
31. The respondent submits that only the terms and conditions of payment between the applicant and respondent are relevant, and that Harbour Air's cancellation terms are irrelevant.
32. With respect to the \$887.00 that the applicant claims, the respondent notes that the total payment it received was only \$687.00.

#### Analysis

33. I am satisfied that the course of dealings between the applicant and the respondent gave rise to a contract between them. The terms of that contract include those specified in:
  - the invoice (“[n]o refund if cancel within 14 days prior to departure”);
  - the respondent's ePayment page (“[n]o refund within 14-day prior to departure date. No partial refund on any unused services”); and
  - the tour confirmation sheet (“\*\*\* SEAPLANE is 100% NON-REFUNDABLE / NON-TRANSFERABLE / NON-CHANGEABLE \*\*\*”).
34. I am unable to find that the terms and conditions shown on the descriptive product information flyer form part of the parties' contract, as there was no evidence that the applicant saw that flyer before paying for the tour. Nothing turns on this point, though, because similar terms were described in the other documentation that I find was provided to the applicant.



35. Based on these documents, I find that the applicant knew (or ought reasonably to have known) that under the contract his booking with the respondent would be non-refundable if cancelled given the payment date and the tour's departure date. Indeed, the applicant does not deny that that term was brought to his attention or claim that he was unaware of it.
36. The applicant's primary argument is it would be "inequitable", "deceptive, confusing and harsh" to apply a 14-day cancellation policy to a booking made fewer than 14 days before departure. The applicant maintains that this would not afford any effective cancellation right at all, contrary to the respondent's statement that it has "policy" of allowing guests to cancel trips. I am not persuaded that, where a tour is subject to a 14-cancellation policy, a customer who is made aware of the policy but still books within 14 days of departure should have a right to cancel the tour and obtain a refund. I do not regard the respondent's terms and conditions as being "so harsh or adverse" to the applicant as to be inequitable within the meaning of the *Business Practices and Consumer Protection Act*. (I also note that the *Business Practices and Consumer Protection Act* applies to a "court" and not the tribunal.)
37. I accept the respondent's submission that the terms and conditions shown on Harbour Air's website are not relevant to the present dispute. The contract was between the applicant and the respondent. Even if those terms and conditions were relevant, they were apparently not the same as the ones shown on the Harbour Air website. The respondent informed the applicant that under the respondent's agreement with Harbour Air, the respondent could not obtain refunds for cancelled guest reservations. The applicant did not establish otherwise.
38. I am also not persuaded that the applicant is entitled to a refund because the Victoria One-Day Tour is a routine, daily trip from May through September or because the cancellation occurred during high season. The respondent held the applicant's reservation until June 16, 2017. Once the respondent cancelled the applicant's reservation, the respondent was unable to re-sell the seats before the

trip departed on June 17, 2017. In the circumstances, the applicant has not established that the respondent suffered no loss in this case.

39. As the applicant has not proven that the respondent is liable to provide the requested refund, I do not need to address the applicant's other requested remedies. As the applicant has not succeeded, I find that he is not entitled to reimbursement of tribunal fees or any dispute-related expenses.

40. The respondent made no claim for dispute-related expenses.

## **ORDERS**

41. I order that the applicant's claims be and are hereby dismissed.

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Angus M. Gunn, Tribunal Member