



Civil Resolution Tribunal

Date Issued: July 11, 2018

File: SC-2017-006310

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nyberg et al v. Landa*, 2018 BCCRT 317

BETWEEN:

Heather Nyberg and Daniel Zimmermann

APPLICANTS

AND:

Tom Landa

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants Heather Nyberg and Daniel Zimmermann agreed to buy a 17 foot Boler camping trailer from the respondent Tom Landa, for \$10,300. They paid Mr. Landa \$500 as a deposit to hold the trailer. The applicants later decided not to buy

the trailer due to concerns about its condition. The applicants want their \$500 deposit back. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
4. 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.
5. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issue in this dispute is whether the applicants' \$500 deposit is non-refundable.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. On October 7, 2017, the applicants viewed the respondent's trailer, and as set out in the parties' text messages the next day they negotiated the \$10,300 purchase price. The applicants offered a \$500 deposit to hold the trailer until the respondent returned from out of town, which the respondent accepted. On October 8, 2017, the applicants sent the respondent the \$500 by e-transfer.
9. On October 15, 2017 when Mr. Zimmerman went to pick up the trailer and deal with the transfer of ownership paperwork, there was a problem with the trailer's lights that the applicants say made it illegal and unsafe to tow. Mr. Zimmerman returned home without the trailer.
10. On October 17, 2017, the respondent told the applicants the light issue was a minor concern and had been fixed and the trailer was ready for pick up, which is undisputed. At this point, the applicants did not express any objection and instead communicated their continued intention to complete the sale. The applicants texted the respondent that they would discuss timing and would be in touch later that evening, as it was a challenge to travel during the week.
11. It was not until late in the evening of October 17, 2017 that the applicants advised the respondent that they had changed their mind about buying the trailer. They told the respondent that given the lights issue they were concerned about other issues that might come up. They asked for the \$500 deposit back. The respondent refused, saying they had a deal that he had honoured.
12. I find that the parties' text messages show that the contract was completed: offer, acceptance, and consideration. This type of contract is called an "agreement to sell", as set out in section 6 of the *Sale of Goods Act* (SGA). Because the trailer was a private sale, it was "buyer beware" for the applicants. The implied warranty

provisions in section 16 of the SGA do not apply. There is no suggestion that the respondent misrepresented the trailer in any way.

13. Turning to the central issue in this dispute, there is no suggestion the parties ever agreed that the \$500 deposit would be refundable, and I find that it is not. The applicants had an opportunity to inspect the trailer when they viewed it. The lights concern does not change anything, since the respondent fixed that minor issue and the applicants afterwards said they would discuss timing for the pick-up and completion of the contract. At that point, the trailer was in a deliverable state, as defined in the SGA. The parties' contract was not frustrated. There was nothing in the parties' agreement stating that the deposit was refundable.
14. Contrary to the applicants' suggestion, the respondent did not do anything to breach the parties' agreement. Bearing in mind sections 31, 41, and 53 of the SGA, I find the applicants were not entitled to repudiate or cancel the contract. The applicants failed to complete the contract as they failed to pay the balance owing.
15. The law relating to recovery of deposits is generally as follows. If the contract is silent about the deposit's conditions, it is forfeited if the payer fails to perform their side of the contract (see for examples *Tang v. Zhang*, 2013 BCCA 52, *Rivera v. Metropolitan Construction Ltd.*, 2012 BCPC 0002, and *Malones' Sports Bar v. Ancient Mariner Industries Ltd.*, 2005 BCPC 382). That is the case here: the applicants failed to perform their side of the contract and in doing so they forfeited the \$500 deposit.
16. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicants were unsuccessful and so I dismiss their claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay any fees and does not claim any dispute-related expenses.

ORDERS

17. I dismiss the applicants' claims and therefore this dispute.

Shelley Lopez, Vice Chair