Civil Resolution Tribunal

Date Issued: July 27, 2018

File: SC-2017-006406

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cramb et al v. Mathúna*, 2018 BCCRT 383

B E T W E E N :

Aaron Cramb and Terri Cramb

APPLICANTS

A N D :

Colm Mac Mathúna

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. In July 2016, the applicants, Aaron and Terri Cramb, contracted with the respondent, Colm Mac Mathúna, to custom-build a wood table and chairs for them. They paid a $600 deposit and were initially given an October 2016 completion date. By November 2017, when the applicants filed this dispute, the table and

chairs were still unfinished, despite the respondent’s having given revised delivery dates.

2. In addition, the applicants want a bench returned, which the respondent had made previously and in around October 2016 the respondent took for repair. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.

4. 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. Neither party requested an oral hearing.

5. 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.

6. 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

7. The issues in this dispute are to what extent, if any, the respondent a) must refund the applicant a $600 deposit for custom-built table and chairs, and b) return the applicants' bench.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears 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.

9. The parties had contracted in the past for the respondent to build them custom wood furniture, including a bench. One issue in this dispute is a table and set of 6 chairs the applicants ordered from the respondent in July 2016. There is no formal written contract, but there are text messages and emails in evidence. The fundamental terms are not in dispute. Central to this dispute is the respondent's failure to deliver the furniture in a timely way. It is undisputed that it was understood between the parties that the table and chairs were for the applicants' kitchen.

10. To date, the applicants have not received the ordered table and chairs, and it is undisputed that during the tribunal's facilitation process the table was viewed and it was incomplete. Given the evidence below, I infer that the chairs were also incomplete, if they were started at all.

11. I turn to the relevant chronology. Between August and September 2016, the parties exchanged design ideas. In late September 2016, they agreed upon a $2,680 total price for the table and chairs, and the applicants paid the $600 deposit. The parties agree that October 2016 was the initial promised completion date.

12. The parties had further design discussions about the table and chairs in October 2016, and on October 22, 2016 Ms. Cramb asked, "Are we still looking at the end

of November for completion?", and the respondent replied yes, and that he would let her know of any updates or changes. On November 15, 2016, the respondent contacted Ms. Cramb about different wood he had obtained for the table, and that the "bad news" was that he was "going to say" the completion date for the table was December 20, 2016 and end of December for the chairs.

13. On December 12, 2016, the respondent asked for an update, including about the bench that the respondent had taken for repair, and the respondent said the bench was halfway done, the table was on schedule, but he had not been able to get to the chairs. He wrote, "They'll have to wait until January".

14. On December 20, 2016, Ms. Cramb began to press the respondent for a delivery date for the table. That day, the respondent said it would take about another week, but on December 28, 2016, he said the table was not finished and that he should be able to get it to her in the coming weeks. He apologized for the delay and inconvenience. On December 29, 2016, Ms. Cramb wrote "no worries, no pressure" and "good things take time". I find that up to this point, the applicants had accepted the delays.

15. On January 25, 2017, Ms. Cramb checked in with the respondent about the table, and he responded "still a ways to go" and that he should have more news the following week. Ms. Cramb followed up again on March 8, 2017 and asked for a completion date, noting the original expectation was October 2016. The respondent replied and acknowledged this, saying he was just getting over an illness. The respondent wrote,

> The table and the chairs will be delivered and installed at your home on the 23rd of April. I can deliver the bench the following day …

16. I find that the revised agreed upon delivery date was April 23, 2017, for the table and chairs, and April 24, 2017 for the bench. The applicants continued to try and follow-up. As one example, the respondent wrote on July 29, 2017, "Unfortunately no work was done on the table this week". By August 8, 2017, the respondent

acknowledged the table was coming along slowly and that he not started on the chairs. The respondent has not provided any reasonable explanation for the lengthy delay and why he failed to meet the April 2017 deadline he set.

17. On October 3, 2017, the respondent emailed Ms. Cramb and said the table and bench were available for delivery after October 15, 2017, if he first received payment of $800 for the table and $187 for the bench repair.

18. Ms. Cramb questioned the $800 request for the table, since the table quote was $1,200 and she had already paid a $600 deposit and more than a year had passed since the originally promised delivery date. I agree her position was reasonable in the circumstances.

19. On October 20, 2017, the applicants wrote the respondent to cancel their order for the table and chairs, because the goods had not been delivered. The applicant sought a full refund. While she wrote "to report a problem with the bench", in that letter she did not ask for its return.

20. The respondent's position is that while he acknowledges the work has taken longer than expected, the $600 deposit is non-refundable because it was a "commitment to buy" and went towards labour and materials so that if the applicants changed their mind, he would not be out of pocket.

21. I would agree with the respondent if he had completed the contract within a reasonable time frame. However, I find there is no question that he did not do so. The applicants were patient but by March 2017 they were understandably anxious to receive the furniture they had expected by October 2016, plus the return of their bench by the end of December 2016. The respondent gave the applicants a firm deadline of April 23 and 24, 2017 for all of the furniture, and yet failed to deliver. The fact that the table and chairs are still incomplete in 2018 leads to the conclusion the respondent has breached the parties' contract. At this point, there is no reason to believe the respondent would complete the furniture in a timely way.

22. As for the bench, I accept the applicants' undisputed evidence that when the respondent was at Ms. Cramb's yoga studio, she mentioned it was damaged. It is undisputed that the respondent took the bench to repair it. The respondent agrees he offered to repair it at no cost, but submits that this was necessarily tied to getting payment for the table and chairs. I do not agree, as there is no evidence that the parties agreed to any such condition. Later, the respondent submitted a $187 bill for the bench, which he says is a reasonable "token amount". The parties did not agree that the applicants would pay for the bench repair. In any event, I do not consider this charge reasonable, particularly given the respondent's delay: he took the bench for repair by December 2016, if not before, and he still has it.

23. I find the applicants are entitled to have their $600 deposit and their bench returned. The applicants are entitled to pre-judgment interest on the $600 under the *Court Order Interest Act* (COIA), from April 23, 2017, which is the date I consider most reasonable in the circumstances. In accordance with the tribunal's rules, as the applicants were successful I find they are entitled to reimbursement of $125 in tribunal fees.

ORDERS

24. I order that the respondent must immediately pay the applicant a total of $732.01, comprised of:

    a. $600 refund of the applicants' deposit for the table and chairs,

    b. $7.01 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

25. I order that the respondent immediately return the applicants' bench to them, in its current condition. The applicants are entitled to post-judgment interest under the COIA.

26. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection

under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's decision.

27. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair