



Civil Resolution Tribunal

Date Issued: September 19, 2018

File: SC-2018-000593

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sklar v. Flesher*, 2018 BCCRT 537

BETWEEN:

Beverly Sklar

APPLICANT

AND:

Toreen Flesher

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Beverly Sklar, wants the respondent, Toreen Flesher, to refund a non-refundable \$600 deposit the applicant paid for an escorted tour of Bali. The issue is whether the respondent failed to reasonably inform the applicant that she

needed to buy cancellation insurance if the respondent (rather than the applicant) cancelled the trip, which the applicant says is what happened. 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.
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 I can fairly resolve it based on the documentary evidence and submissions before me.
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.

ISSUE

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant a refund for a trip deposit.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons.
9. It is undisputed the applicant booked a Bali trip for herself and her husband, to be escorted by the respondent and her husband. For the trip, the applicant paid the respondent a \$600 deposit on around August 23, 2016, which the applicant acknowledges was expressed as being non-refundable.
10. The issue in this dispute turns on what was reasonably understood when the respondent told the applicant to get cancellation insurance, given it is undisputed the deposit was clearly stated as being non-refundable.
11. The applicant says the respondent never told her she needed cancellation insurance if the respondent cancelled the trip, and the applicant did not think the warnings about being cautious during travel were serious enough to warrant cancellation herself.
12. In her reply submission, the applicant submits that she “knew that if I cancelled the tour, I would be out \$600”. The applicant’s position is that she did not cancel the tour, the respondent did, and thus the respondent should refund the \$600 deposit. I disagree. I find I do not need to dwell on which party cancelled the trip, which is disputed. Either way, I find the respondent’s written recommendation “\$300 non-refundable deposit it is advised that you obtain cancellation /interruption insurance” is sufficient advice. In other words, the onus was on the applicant to make the appropriate inquiries about what cancellation or “interruption” insurance may be necessary.

13. The applicant chose not to obtain that insurance on the erroneous belief that she only needed cancellation insurance if she herself cancelled the trip. These circumstances do not amount to a breach of contract by the respondent. I find the applicant's claim must be dismissed.
14. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees.

ORDER

15. I order the applicant's claims, and therefore this dispute, dismissed.

Shelley Lopez, Vice Chair