



Civil Resolution Tribunal

Date Issued: November 19, 2018

File: SC-2018-002012

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Doherty v. Hynes*, 2018 BCCRT 725

B E T W E E N :

Janet Doherty

APPLICANT

A N D :

William Hynes

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. This dispute is about whether the applicant is entitled to be refunded the deposit she paid to the respondent to build custom furniture.
2. The parties were self-represented.
3. For the reasons that follow, I find that the applicant is entitled to the claimed refund.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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; or
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to be refunded the deposit she paid to the respondent.

EVIDENCE AND ANALYSIS

Evidence

9. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
10. The parties' evidence largely consists of email communications between them. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. The respondent, William Hynes, is in the business of creating custom log furniture and does business under the name Deep Forest Log Furniture. In some instances, Mr. Hynes' spouse communicated with the applicant on his behalf.
12. In late November 2016 the applicant, Janet Doherty, came across the Deep Forest Log Furniture website. On November 29, 2016 she contacted Mr. Hynes. She was looking to replace her bedroom furniture with a matching set and had questions about the business and whether Mr. Hynes could build furniture with customized design details. Mr. Hynes confirmed that he could accommodate her requests.
13. Mr. Hynes then gave Ms. Doherty a quote on December 13, 2016.
14. On December 15, 2016, Ms. Doherty decided to place an order for the following furniture: a queen bed with customized design details, one tall dresser, two night tables and one mirror (furniture). Mr. Hynes confirmed the order and gave Ms. Doherty an invoice for the furniture (invoice).
15. The invoice set out the terms of the furniture order, including: the price; that a 75% deposit was required to start the project; and that the balance was due upon completion of the furniture. The invoice also stated that Ms. Doherty could participate with all measurements and details to customize the furniture.
16. I find that Ms. Doherty accepted the terms of the invoice and that they formed the basis of a contract between them to supply and deliver the furniture (contract). This

occurred when Ms. Doherty paid Mr. Hynes a deposit in the amount of \$4,334.40 on December 23, 2016. I also find that Mr. Hynes proceeded with the project on the basis of the contract.

17. Based on the evidence, it appears that the next communication between the parties was on May 18, 2017 when Ms. Doherty wrote to Mr. Hynes to find out about the status of her order. Mr. Hynes responded that her wood package had arrived, but they were running behind. Mr. Hynes said they were working on it, and her furniture would be ready for shipping in late June.
18. The next communications in evidence are dated June 10, 2017. Ms. Doherty wanted to establish a clear timeline for completion of the furniture, or to organize a refund. The parties also went back and forth about design details for the furniture. Ms. Doherty gave her preference for certain design details, including in particular that she wanted to have the drawers in the dresser “split”. I find that splitting the drawers was a request to have several smaller drawers instead of a few larger ones. Mr. Hynes said splitting the drawers would be more work and that he was already overwhelmed. Ms. Doherty asked Mr. Hynes to confirm whether he was prepared to proceed with finalizing the design details for the furniture and commit to completing the project within a months’ time. If not, Ms. Doherty offered to cancel the order and accept a refund.
19. On June 14, 2017, Mr. Hynes gave Ms. Doherty a number of design options and asked her to confirm certain furniture measurements. He said that the project would take two weeks from start to finish.
20. In the exchange that followed, Ms. Doherty gave her input on several design features for the furniture. I find that Mr. Hynes accepted these instructions, except as it related to splitting the dresser drawers. I find that Mr. Hynes was not willing to split the drawers according to Ms. Doherty’s wishes. Instead he offered Ms. Doherty one of two pre-set design options for the dresser design.

21. In response, Ms. Doherty referred to the terms of the invoice which stated that she could participate in the design of the furniture. Ms. Doherty offered to either find a plan that would work for both parties, or cancel the order.

22. Mr. Hynes' response on June 22, 2017 was:

"Fine

Order cancelled as of today

We will send a cheque down when I get back in town ..."

23. Approximately one week later, Ms. Doherty wrote to ask when she could expect her refund. Mr. Hynes eventually responded and said he was having difficulty putting the funds together due to a variety of challenges in his business and personal life.

24. The parties went back and forth for a few months discussing options for a payment plan. I find that on September 9, 2017 the parties agreed to a payment plan to refund Ms. Doherty's deposit by December 31, 2017. Further to that agreement, I find that Mr. Hynes electronically transferred \$600 to Ms. Doherty on September 16, and a further \$500 on December 18, 2017. The following day, Mr. Hynes said that he was doing his best to repay the balance, but that he was strained financially.

25. Mr. Hynes did not thereafter repay the balance of the deposit, and Ms. Doherty ultimately commenced this dispute.

Analysis

26. On the evidence, I find that Mr. Hynes refused to split the dresser drawers and as such was not prepared to perform the contract according to its terms. Ms. Doherty offered to either work toward a mutually agreeable solution or terminate the contract. Mr. Hynes chose to terminate the contract and confirmed he would send a cheque when he got back in town. As such, I find the parties mutually agreed to terminate the contract and refund Ms. Doherty's deposit.

27. I further find that Mr. Hynes agreed to a repayment plan, and in fact made several payments totaling \$1,100 to refund the deposit.
28. Based on my conclusions above, I grant the applicant's claim for payment of the balance of the deposit in the amount of \$3,234.40 (balance).
29. The balance was due for repayment on December 31, 2017. According to the *Court Order Interest Act* (COIA), the applicant is also entitled to pre-judgment interest on this amount as of that date. This pre-judgment interest totals \$35.81.
30. Pursuant to section 49 of the Act, and the tribunal's rules, the tribunal generally orders an unsuccessful party to reimburse the successful party's tribunal fees and dispute-related expenses. I see no reason to depart from the general rule in this case. Given the applicant was successful, I find that she is entitled to reimbursement of her tribunal fees totaling \$175 and dispute-related expenses in the amount of \$14.53 for registered mail.

ORDER

31. I order that within 30 days of this decision, Mr. Hynes must pay Ms. Doherty a total of \$3,459.74, broken down as follows:
 - a. \$3,234.40 on account of the balance of the deposit;
 - b. \$35.81 in pre-judgment interest under the COIA;
 - c. \$175 as reimbursement for tribunal fees; and
 - d. \$14.53 for dispute-related expenses.
32. The applicant is entitled to post-judgment interest as applicable from the date of this order.
33. 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 final decision.

34. 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.

Jordanna Cytrynbaum, Tribunal Member