



# Civil Resolution Tribunal

Date Issued: November 21, 2018

File: SC-2018-001764

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lodge v. Reg Butcher (Doing Business As Cabinet Master)*,

2018 BCCRT 746

BETWEEN:

Guy Lodge

**APPLICANT**

AND:

Reg Butcher (Doing Business As Cabinet Master)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This is a dispute over a \$5,000 deposit that the applicant, Guy Lodge, paid to the respondent, Reg Butcher (Doing Business As Cabinet Master), for the design and

manufacture of kitchen cabinets. The applicant alleges that they paid deposit but had to hire another contractor to make the kitchen cabinets because the respondent failed to remain in contact or to perform any work. The applicant claims a full refund.

2. The parties are each 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.
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 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.

## **ISSUES**

7. The only issue in this dispute is whether the applicant is entitled to a refund of the \$5,000 deposit they paid to the respondent.

## **EVIDENCE AND ANALYSIS**

8. While I have reviewed all of the materials provided, I have only commented on the evidence and submissions as necessary to explain and give context to my decision.
9. The respondent participated in the facilitation process, but chose not to provide any evidence or submissions after the facilitation process ended despite numerous reminders from the tribunal case manager.
10. On May 23, 2017, the parties entered into a written agreement for the respondent to design and manufacture kitchen cabinets for \$10,000 as part of renovations to the applicant's home. The agreement stated that the applicant would pay \$5,000 up front as a deposit and \$5,000 when the respondent finished the work. The agreement does not say that the deposit is non-refundable.
11. The applicant paid the deposit on May 24, 2017.
12. The applicant states that after the parties signed the agreement, there were engineering and permitting problems with the renovation that caused a delay. The applicant told the respondent about the delay but assured the respondent that they still wanted the respondent to do the work.
13. The applicant sent the respondent a message on October 10, 2017, to ask the respondent to meet to discuss moving forward with building the cabinets. On October 24, 2017, the applicant asked the respondent to provide drawings for the

cabinets and to confirm that he was committed to finishing the project. The respondent responded on November 2, 2017, stating that he would have time in a few days. The respondent did not provide the plans and after November 9, 2017, the respondent stopped communicating with the applicant.

14. The applicant continued to demand that the respondent provide plans for the cabinets until December 6, 2017, when the applicant told the respondent that they had to hire a new cabinet supplier.
15. The applicant demanded the return of the deposit, but the respondent refused.
16. In the respondent's dispute response, he does not deny any of the applicant's allegations. The respondent states that he lost money on the deal with the applicant because he had already done some manufacturing when the applicant cancelled the agreement. The respondent states that he has no opinion about any of the applicant's claims.
17. The agreement is a future performance contract within the meaning of the *Business Practices and Consumer Protection Act* (BCPCA) because the entire cost of the goods and services was not paid at the time the parties entered into the agreement. Section 23(2)(b) requires future performance contracts to specify the date that the supply of the goods and services will be complete.
18. Section 23(5) of the BCPCA states that if a future performance contract does not state the date that the supply of the goods and services will be complete, the consumer may cancel the contract within one year. Section 27 of the BCPCA states that if a consumer cancels a contract under section 23(5), they are entitled to a refund.
19. The agreement did not state the date that the cabinets would be supplied. Because the applicant cancelled the agreement within one year of the date the parties signed it, the applicant is entitled to a refund.

20. As for the respondent's position that he had already done work on the project when the applicant cancelled the agreement, the respondent has not provided any evidence to support his position. There is insufficient evidence to order any set-off from the deposit. I find that the applicant is entitled to a refund of the entire deposit.
21. I therefore order the respondent to pay the applicant \$5,000.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant did not claim any dispute-related expenses.

## **ORDER**

23. Within 14 days of the date of this order, I order the respondent to pay the applicant \$5,294.82, broken down as follows:
  - a. \$5,000 as a refund of the deposit.
  - b. \$59.91 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.

26. 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.

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Eric Regehr, Tribunal Member