



# Civil Resolution Tribunal

Date Issued: November 23, 2018

File: SC-2017-007591

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chaturvedi et al v. Reg Butcher doing business as Cabinet Masters*,  
2018 BCCRT 758

B E T W E E N :

Mahesh Chaturvedi and Janice Chaturvedi

**APPLICANTS**

A N D :

Reg Butcher doing business as Cabinet Masters

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, Reg Butcher doing business as Cabinet Masters, due to his non-compliance with the tribunal's directions as required, as discussed below.

2. The applicants say the respondent agreed to provide cabinet doors and hardware, but failed to deliver them. The applicants claim a refund of the \$3,000 deposit they paid.
3. In his Dispute Response, the respondent says the deposit is “non-refundable”. The respondent says he already cut “expensive cherry woods” for the cabinets.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.

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;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The first issue is whether I should proceed to decide the applicants' claim, without the respondent's further participation given his non-compliance.
9. The second issue is to what extent I should order the respondent to pay the applicants the claimed \$3,000.00.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

10. My May 15, 2018 summary decision to hear the dispute without the respondent's participation, given his non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
11. The respondent is the non-compliant party in this dispute. He has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact him with a request for a reply.
12. The Amended Dispute Notice was issued on February 2, 2018. The respondent filed a Dispute Response on February 21, 2018. The facilitator made the following attempts at contact:

- a. **March 29, 2018** – The facilitator emailed the parties and requested a reply by April 4, 2018. The respondent did not reply.
  - b. **April 1, 2018** – The facilitator emailed a conference call reminder with a deadline of May 1, 2018 at noon. The respondent did not reply.
  - c. **May 1, 2018** – The respondent did not participate in the telephone conference call attended by the applicant, despite having been sent instructions on how to call in.
  - d. **May 1, 2018** – The facilitator texted the respondent directing him to review his emails. The text warned him that if he failed to comply with directions, the dispute would be decided without his further participation.
  - e. **May 1, 2018** – The facilitator emailed the respondent warning him that, if he did not reply to the email by 6:00 p.m., the dispute would be referred for a decision without his further participation. The respondent did not reply.
  - f. **May 1, 2018** – The respondent called the facilitator and said he had not received the emails and asked that another conference call be scheduled. The facilitator explained that the emails had been sent to the address he provided, and had not bounced back. The facilitator directed the respondent to reply as requested in her email. The facilitator pointed out that the applicants had replied promptly to all communications.
  - g. **May 1, 2018** – The facilitator texted the respondent and included the text of her email sent earlier that day. The facilitator asked that the respondent reply by email by no later than 4 pm on Friday May 4, 2018, failing which a tribunal member would decide the dispute without its participation. The respondent did not reply.
13. The facilitator referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without his further participation.

***Should the tribunal hear the applicant's dispute?***

14. I find the respondent has not provided an adequate explanation about why he failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact him. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find it is more likely than not that the respondent was aware of the attempts to contact him and chose not to respond.
15. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
16. First, this claim does not affect persons other than the parties involved in this dispute.
17. Second, the non-compliance here occurred at the outset of the facilitation process. No substantive discussions between the parties occurred. The respondent has effectively abandoned the process after providing a response. Third, given the facilitator's repeated attempts at contact and the respondent's failure to respond in any meaningful way despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicants in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear

the dispute is outweighed by the circumstances of his non-compliance. If I refused to proceed to hear the dispute, the applicants would be left without a remedy. That would be unfair.

19. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is impaired if one party fails to participate. I find that it would be wasteful for the tribunal to continue applying resources to this dispute, such as by making further attempts to seek the respondent's participation.
20. In weighing the factors, I find the applicants' claims should be heard. In deciding to hear the applicants' dispute I have put significant weight on the following factors:
  - a. the extent of the non-compliance is significant;
  - b. the applicant is not prejudiced if such an order is made; and
  - c. the need to conserve the tribunal's resources.

### ***Merits of the Dispute and Damages***

21. I have decided to hear the dispute without the respondent's participation. I turn to the merits of the dispute.
22. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against him. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicants' position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.
23. Having said that, I reviewed the Dispute Response, because it was filed prior to the respondent's non-compliance.
24. In the Dispute Response, the respondent does not say that he delivered the cabinets. He agrees that the applicants paid him a deposit. Other than his own

statement, he provided no evidence that the deposit was non-refundable. Given his non-compliance, I draw an adverse inference against the respondent.

25. The *Business Practices and Consumer Protection Act (BPCPA)*, at section 23, permits a consumer to cancel a future performance contract as long as notice is given within a year of receiving a copy of the contract. The BPCPA supports the conclusion that the deposit is refundable.

26. I find the deposit was not non-refundable.

27. I accept the applicants' evidence as follows:

- a. On September 23, 2017, the parties signed a contract.
- b. The applicants agreed to pay \$5,000.
- c. The respondent agreed to provide 39 cabinet doors, and hardware.
- d. The contract said the cabinets would be provided within 10-20 days.
- e. The applicants paid the respondent a \$3,000 deposit.
- f. The cabinets were never delivered.
- g. The applicants requested a refund on November 3, 2017 and the respondent refused.

28. Because the respondent did not fulfil his promise under the contract, I order him to refund the \$3,000 deposit.

29. 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 \$125 in tribunal fees.

## ORDERS

30. Within 10 days of the date of this order, I order the respondent to pay the applicants a total of \$3,166.01, broken down as follows:
- a. \$3,000 as reimbursement for the deposit,
  - b. \$41.01 in pre-judgment interest under the *Court Order Interest Act*, calculated from September 23, 2017 when the deposit was paid to the date of this decision, and
  - c. \$125 in tribunal fees.
31. The applicants are entitled to post-judgment interest, as applicable.
32. 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.
33. 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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Julie K. Gibson, Tribunal Member