



# Civil Resolution Tribunal

Date Issued: December 13, 2018

File: SC-2018-002906

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morris et al v. Country Lane Décor*, 2018 BCCRT 838

**B E T W E E N :**

Rani Morris and Peter Morris

**APPLICANTS**

**A N D :**

Country Lane Décor

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This dispute is about payments the applicants, Rani Morris and Peter Morris, made to the respondent for custom-made furniture. The applicants did not proceed with the purchase, and seek the return of the funds they paid to the respondent, Country Lane Décor. The respondent says the payment is non-refundable.
2. The applicants are represented by the primary applicant, Rani Morris. The respondent is a partnership, and is represented by Randy Klassen and Jennifer Klassen.

## **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.

## **ISSUE**

7. The issue in this dispute is whether the applicants are entitled to the return of funds paid to the respondent.

## **EVIDENCE AND ANALYSIS**

8. In a dispute such as this, the applicants bear the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. The applicants made an electronic transfer of funds to the respondent in the amount of \$1,000 on March 6, 2017. The applicants understood that this payment would hold a place on the wait list for custom furniture they intended the respondent to produce.
10. In August of 2017, the applicants decided on a particular style of bed they wanted the respondent to make. They made a second payment of \$792.00 on September 7, 2017.
11. Later in September of 2017, the applicants determined that the bed they had selected did not match their intended design style and decided not to proceed with the custom bed. The applicants attempted to find another item to purchase from the respondents, but were unable to find anything to meet their needs. On December 8, 2017, the applicants asked for their money back, but the respondent told them the deposit was non-refundable. The applicants again tried to find other items to purchase but were unsuccessful. The respondents declined to refund any of the

money paid by the applicants. It is apparent that the relationship between the parties had broken down by April of 2018, when the Dispute Notice was filed.

12. The applicants say that they are entitled to the return of the funds they paid to the respondents. They seek an order for a refund of \$1,792 from the respondent, in addition to tribunal fees and dispute-related expenses.
13. The respondent says that deposits paid to it are not refundable, and takes the position that it is not required to return any funds to the applicants. The respondent says it lost out on business because of holding the applicants' spot in the work queue. The respondent also says it incurred some expenses as a result of the applicants' change of mind. However, the respondent did not bring a counterclaim against the applicants.
14. I turn to the parties' evidence about the bed order. The parties appear to have had discussions that culminated in the applicants paying a deposit to the respondent. The details of those discussions have not been provided. The applicants' evidence contains images of an invoice number 094659 dated March 6, 2017, which is the same date the first money transfer occurred. The invoice does not contain information about the seller, but identifies the buyer as one of the applicants. The invoice has handwritten notations saying "Deposit \$1,000" and "fall finish date". It does not contain any product description. There is no indication that the deposit or other money paid was non-refundable.
15. The respondent's evidence contains an image of a handwritten invoice number 094659, but this version contains a description of a bed for the amount of \$1,600. The notation of "Deposit \$1,000" is crossed out, with additions of "\$1,792.00", "PAID IN FULL", and "end of Nov". There is nothing to indicate that the money paid was non-refundable. The respondent provided a subsequent image showing this information crossed out. It is not clear when these modifications were made to the original invoice. The respondent also provided an image of a second undated invoice number 094660 showing descriptions of a desk for \$1,000 (which is crossed out), a table for \$1,100, two benches for \$400, and a church pew for \$350. The

applicants say they were thinking about these items, but did not agree to purchase them. The respondent says the invoice amounts to a binding contract.

16. The applicants say they were not informed that their deposit would be non-refundable at the time they made the payments. The respondent submitted images of a website page entitled “Disclaimer”, which says that deposits are non-refundable but an order may be changed before the building process has begun, and that deposits may be used as store credit towards another item. The respondent also provided screenshots of information from an unidentified website titled “Returns and Refunds”, as well as pages discussing contract law and consumer protection. The applicants say this information was not on the respondent’s website until April of 2018. The respondent did not provide a response to this statement.
17. Whatever policies the respondent had in place at the time it contracted with the applicants would not take precedence over applicable legislation. The *Business Practices and Consumer Protection Act* (“BPCPA”) addresses refunds and the return of goods on cancellations of contracts.
18. The respondent suggests that this legislation does not apply to this transaction. In some of the correspondence submitted in evidence, a representative of the respondent described its sales as private and therefore subject to common law rather than consumer legislation. In order for the sale to be private, the respondent would have to not be in the business of selling furniture. I find this is not the case, as the respondent’s website describes it as a “business that makes rustic and industrial coffee tables, beds, desks, bookshelves, harvest tables, barn doors and so much more”.
19. Section 1 of the BPCPA describes a supplier as a person who, in the course of business, participates in a consumer transaction by supplying goods or services or real property to a consumer. A consumer transaction means a supply of goods or services or real property by a supplier to a consumer for purposes that are primarily personal, family or household. I find that the respondent meets the definition of a supplier, and that it engages in consumer transactions as contemplated by the

BPCPA. Although the tribunal cannot award damages under the BPCPA, I can consider and rely upon it when determining the outcome of the dispute.

20. A future performance contract is a contract for the supply of goods or services between a supplier and consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made. Because the applicants did not pay the full amount for furniture that was intended to be supplied in the future, I find that the agreement between the parties was a future performance contract.
21. Section 23(5) of the BPCPA provides that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than one year after the date that the consumer receives a copy of the contract, if the contract does not contain the information required under sections 19 and 23(2) of the BPCPA. This information includes the supplier's information, a detailed description of the goods or services to be supplied under the contract and the supply date.
22. The documentation of the agreement between the parties appears in the invoices as described above. The initial invoice dated March 6, 2017 does not contain a detailed description of the goods and services to be supplied. Although additional information about these details was added at a later date or dates, no supplier information or specific supply date appears in the agreement. I find that the agreement does not contain all of the information required by section 19 and 23(2) of the BPCPA. As such, I am satisfied that the applicants were entitled to cancel their future performance contract. The fact that they initially wished to apply the funds to different items does not alter this conclusion. Quite apart from the BPCPA, I would order the return of the money paid by the applicants, as the terms agreed to by the parties at the outset did not specify that the funds would be non-refundable.
23. I find that the December 8, 2017 email message from the primary applicant amounts to notice of cancellation within one year of receiving a copy of the contract. Section 27 of the BPCPA provides that, if a contract is cancelled under section 23,

the supplier must refund the consumer all money received under the contract without deduction. Accordingly, the respondent must refund the \$1,792.00 paid to it by the applicants.

24. 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 applicants are entitled to reimbursement of \$125 in tribunal fees. I also find that the applicants are entitled to \$127.80 in dispute-related expenses, being the costs of serving the dispute notice by process server after the respondent declined to accept electronic service.
25. The applicants are also entitled to pre-judgment interest under the Court Order Interest Act (“COIA”). Calculated from December 8, 2017 to the date of this decision, the interest payable is \$23.31.

## **ORDERS**

26. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$2,068.11, broken down as follows:
  - a. \$1,792 as reimbursement for payments made under the cancelled contract;
  - b. \$23.31 in pre-judgment interest under the COIA; and
  - c. \$252.80 for \$125 in tribunal fees and \$127.80 for dispute-related expenses.
27. The applicants are entitled to post-judgment interest, as applicable.
28. 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.

29. 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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Lynn Scrivener, Tribunal Member