



Civil Resolution Tribunal

Date Issued: February 14, 2019

File: SC-2018-005103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Skelly v. A&B Tailor Shop Inc.*, 2019 BCCRT 187

B E T W E E N :

Robert E. Skelly

APPLICANT

A N D :

A&B Tailor Shop Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This dispute relates to the cancellation of tailor services. The applicant, Robert E. Skelly, paid the respondent, A&B Tailor Inc., a deposit of \$784.00 for a custom suit. The applicant asks for the return of his deposit.

2. The applicant represents himself. A principal or employee represents the respondent.

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 118 of the *Civil Resolution Tribunal 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 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something or to pay money and may order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are to what extent, if any, the applicant is entitled to a refund of his \$784 deposit.

EVIDENCE AND ANALYSIS

8. The applicant bears the burden of proof on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence and submissions necessary to give context to my decision.
9. On January 3, 2018 the parties entered into a contract for the respondent to make the applicant a suit for \$1,400 plus taxes. Due to certain physical characteristics, the applicant required a custom made fitted suit. The parties disagree whether there is a difference between a fitted suit or a made to order suit. I find nothing turns on this evidence.
10. The terms that the respondent says the applicant agreed to are set out in a document prepared by a principal or employee of the respondent. The document includes the words "invoice." The applicant did not sign the invoice and says he was unaware of the terms before paying the deposit.
11. Handwritten on the invoice under the word 'description' are the words "blue suit." Handwritten under amount and next to the words blue suit is "1400" and what appears to be a question mark. Below those words there is a handwritten note that says "Deposit 700+tax 784.00."
12. The invoice includes a place to write the time and date for pick up. It also has the following small print at the bottom of the form: 1. We are not responsible for articles left over 30 days. 2. No refund-store credit only. 3. Quality service guaranteed within 30 days with receipt. 4. 50 cents storage charge per day after 30 days. 5. There will be a 20% restocking charge on shipped or unshipped goods. 6. You should thoroughly inspect this shipment as soon as received. Also hand-written on the invoice is the following: "As is floor model" and "As on Floor".
13. The suit did not meet the applicant's expectations. In particular, the applicant says that the back two vents stuck out like a duck tail because of the curve of the applicant's back. The applicant believes this effect was avoidable by following the proper fitting stages for a fitted suit.

14. During a second fitting, when alterations did not improve the look of the suit, the applicant concluded that the respondent could not make him a well fitted suit. As such, the applicant asked the respondent for a refund of the deposit. The respondent refused.
15. Although not argued, the *Business Practices and Consumer Protection Act* (BPCPA) applies to the suit contract. The BPCPA applies because the respondent meets the definition of “supplier” in the BPCPA, which includes a person who in the course of business enters a consumer contract by supplying, or offering to supply, goods to a consumer.
16. I find the parties entered into a future performance contract for the supply of goods as defined in the BPCPA. Specifically, the contract was for the supply of goods between a supplier and a consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Because the applicant was not required to make full payment for the suit at the time he entered into the contract on in January 2018, and because the completed suit would be supplied sometime in the future, I find that the contract was a future performance contract.
17. As a future performance contract, the contract had to include a number of prescribed terms. I find that the contract did not include all the required terms. In particular, the contract did not contain a detailed description of the goods, as required in section 19 of the BPCPA. Further, the contract did not include the date on which the finished suit would be provided, as required in section 23. Because some of the prescribed information was missing, the applicant was entitled under section 23(5) to cancel the contract within one year.
18. For these reasons, I find that the applicant was entitled to cancel the contract. The BPCPA sets out how to give notice of cancellation in section 54. That section allows a notice of cancellation to be by any method that permits a person to produce evidence that the contract was cancelled on a specific date. Here, the cancellation is not in dispute. The respondent admits in the Dispute Response that the contract

was cancelled in person and the applicant provided a reason. As such, I find that notice was given as required.

19. Section 27 of the BPCPA says that if a contract is cancelled under section 23, which arose here, the supplier must refund the consumer all money received in respect of the contract, without deduction. Accordingly, I conclude that the respondent must return the deposit of \$784 to the applicant.
20. That section also gives a supplier 15 days to provide the refund after it is requested. Although the date of cancellation is known to the parties, it was not provided to me. It is undisputed that the applicant became aware of the claim in early April. Given the nature of the claim, I find that the 15 days would have ended by April 30, 2018. As such, I award interest under the *Court Order Interest Act* (COIA) from that date.
21. The applicant claims for reimbursement of sending a registered letter before the tribunal process was initiated. Insufficient information was provided about the letter to assess whether that claim should be awarded. As such, I make no award for this pre-dispute disbursement.
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. The applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant also claims \$11.96 for dispute related expenses, which I order.

ORDERS

23. I order that within 14 days of the date of this order, the respondent pay the applicant a total of \$930.07, broken down as follows:
 - a. \$784 as a refund of the deposit,
 - b. \$9.11 in interest under the COIA from April 30, 2018,
 - c. \$11.96 for dispute related expenses, and

d. \$125 for tribunal fees.

24. The applicant is entitled to post-judgment interest, as applicable.

25. The applicant's remaining claims are dismissed.

26. 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.

27. 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.

Megan Volk, Tribunal Member