



Civil Resolution Tribunal

Date Issued: March 28, 2019

File: SC-2018-005925

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. McNeil*, 2019 BCCRT 392

B E T W E E N :

Deborah Robertson

APPLICANT

A N D :

Rod McNeil

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Deborah Robertson says she gave the respondent Rod McNeil a \$500 deposit toward his Bayliner boat. When she paid the deposit, the applicant says they had yet to firmly agree on a sale price. Upon seeing detailed photographs of the boat, the applicant decided not to buy it. The applicant says the photographs revealed damage to the boat that the respondent failed to disclose. She asks that the respondent refund her \$500 deposit.

2. The respondent says the applicant agreed to buy the boat for \$21,000. He says the applicant paid him a \$500 deposit, and he agreed to deliver the boat to her in a few days' time. After that discussion, the applicant asked to have a mechanical inspection of the boat. The respondent says he refused to bring the boat to the applicant but offered to have her come down to inspect it, lake test it or have it inspected in a marine shop.
3. The respondent says the applicant contacted him the next day with concerns. The respondent agreed to be paid \$18,000 right away, with \$3,000 held back until the applicant could get a satisfactory inspection. He refused to lower the agreed sale price. Then, the day before he was to deliver the boat to the applicant, he says she phoned and back out of their deal. She asked for \$400 of the deposit back. He declined.
4. The respondent says the deposit was non-refundable. He asks that the dispute be dismissed.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "she said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
8. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

9. 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.
10. 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

11. The issue in this dispute is whether the \$500 deposit the applicant paid to the respondent should be refunded to her.

EVIDENCE AND ANALYSIS

12. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
13. Based on the evidence, I find the following facts:
 - a. In 2018, the respondent advertised the boat for sale on Craigslist.
 - b. On June 5, 2018, the applicant contacted him asking about the boat. The respondent told her that he had not used it since the summer of 2017, when he “blew the engine” and had it replaced for over \$7,000.
 - c. Although there was no evidence of the exact date, the parties agree and I find that, in early June 2018, the applicant paid a \$500 deposit to the respondent.
 - d. While the \$500 deposit date is not specific in the evidence, I find June 10, 2018 to be a reasonable date for the purposes of calculating pre-judgment interest, as detailed below.

- e. The parties were discussing a sale price in the \$21,000 range. I find that they agreed on a \$21,000 sale price, but only subject to further examination of the boat by the applicant.
 - f. After the applicant paid the \$500 deposit, the respondent disclosed that he was not the registered owner nor insured on the trailer, which both parties had contemplated as part of the purchase.
 - g. Based on the communications between the parties, I find that there was no agreement that the deposit was given on a non-refundable basis.
 - h. The respondent sent some photographs of the engine and boat interior to the applicant, at her request.
 - i. When the applicant had her mechanic review the photographs, he raised concerns.
 - j. The applicant contacted the respondent trying to negotiate a lower sale price, based on the issues with the trailer and the boat's condition.
 - k. The respondent became frustrated and cancelled the sale.
14. In finding these facts, I place particular weight on the respondent's own text message evidence in which he cancelled the sale.
15. After the deposit was paid, the applicant asked if she could have the boat "surveyed" and the respondent texted saying, in part "Look move on. I'm done ok. This has turned into a huge hassle. I don't have time for this." He then declined to deliver the boat for her to survey it and asserted that it was in "great condition."
16. The respondent later said he did not want to deal with the applicant any longer. He texted her saying he would relist the boat for sale.
17. On June 13, 2018 the respondent informed the applicant that she would have her deposit back "when boat sells."
18. I find that the applicant paid the deposit, but that both parties understood she would be conducting some inspection of the boat before a sale would be finalized. When the applicant raised her concerns, the respondent withdrew from negotiations, but kept her deposit.
19. The respondent says he spent \$475 or \$375 or \$360 on insurance and taxes for the boat trailer, depending on which part of his submissions or evidence I refer to. The respondent argues that he is excused from refunding the deposit because the

applicant “made him” insure the trailer, and then refused to complete the purchase of the boat. I disagree. I find that the fact of insuring the trailer is not a defence to the claim for return of the deposit. In any event, the respondent decided to insure and pay taxes on the trailer. The applicant did not force him into it.

20. Although the parties came to an agreement in principle for the sale and purchase of the boat and the \$500 deposit was paid, it was conditional upon further inspections being satisfactory to the applicant. When they were not, the applicant was entitled to cancel the deal. I have found that she did not do so, but that the respondent then cancelled the deal. At that point, the deposit should have been returned to the applicant.
21. In making this finding, I rely on the reasoning in *Mitchell v. Menezes*, 2018 BCCRT 694 which, while not binding on me, I find persuasive. In *Mitchell*, at paragraph 17, the tribunal vice-chair wrote that when a deposit was paid, there was no ‘meeting of the minds’ between the parties that it was non-refundable. Thus, there was no binding agreement that the deposit was non-refundable, and the applicant was entitled to a refund of the deposit.
22. I find the respondent owes the applicant a refund for the \$500 deposit.
23. As far as the applicant’s request that the respondent cease contact with her, I find that the remedy amounts to a “no contact” order, which is outside the tribunal’s jurisdiction, as discussed in *Knibbs v. Kuan et al*, 2018 BCCRT 152 at paragraph 34 and *The Owners, Strata Plan NW 2275 v. Siebring*, 2018 BCCRT 734 at paragraph 13. A “no contact” order is a personal remedy. Only courts with inherent or statutory jurisdiction to grant such remedies may do so.
24. In submissions, the applicant claimed another \$125 for “lost time/stress”. I would not grant this claim because it was added at the submissions phase, such that the respondent did not have a proper opportunity to address it. In any event, I would have dismissed the stress claim because it was not supported by medical evidence. The claim for lost time would also be dismissed, consistent with the tribunal’s rules that legal fees are not recoverable except in extraordinary cases. This case is not extraordinary.
25. 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

26. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$633.00, broken down as follows:
- a. \$500 as a refund for the deposit,
 - b. \$8.00 in pre-judgment interest under the Court Order Interest Act, calculated from June 10, 2018 to the date of this decision, and
 - c. \$125 for tribunal fees.
27. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.
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.

Julie K. Gibson, Tribunal Member