



# Civil Resolution Tribunal

Date Issued: March 28, 2019

File: SC-2018-006067

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tulk v. Zandy*, 2019 BCCRT 390

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

Kyle Tulk

**APPLICANT**

**A N D :**

Nzar Zandy

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. The applicant Kyle Tulk says he gave the respondent Nzar Zandy a \$1,000 deposit to hold a 2011 Honda CRV (car), until he could check the car's accident and claims history. When the applicant obtained the car's history, he found the car had been written off as a total loss in 2018. The applicant told the respondent he no longer wanted to buy the car. The respondent refused to return his deposit.

2. The applicant claims \$1,000 for return of the deposit.
3. The respondent says he should be allowed to keep the \$1,000 because the applicant backed out of their deal, causing him to lose potential buyers.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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 "he said, she 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.
7. 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.
8. 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.

9. 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**

10. The issue in this dispute is whether the applicant is entitled to a refund of the \$1,000 deposit he paid the respondent.

## **EVIDENCE AND ANALYSIS**

11. 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.
12. On August 9, 2018, the applicant paid the respondent \$1,000 as a deposit on the car.
13. Based on the documentary evidence I find that the car was declared a total loss on January 25, 2018.
14. The applicant says this deposit was paid pending obtaining the car's claims and accident history. The respondent says the applicant had already agreed to buy the car, without this condition.

15. I prefer the applicant's evidence on this point because, in submissions, the respondent agreed that, when the applicant handed him the \$1,000, he said that he needed the ICBC report and inspection for the car.
16. As well, the applicant filed an ICBC accident and claims history report for the car in evidence showing it was a total loss.
17. By contrast, the respondent said he had an ICBC report where the car "passed" an inspection. He did not file that document in evidence.
18. I find that the applicant paid the deposit on the car pending a satisfactory accident and claims history report. Because that report showed the car was a total loss that was rebuilt, I find the applicant is entitled to a refund of his deposit.
19. 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.
20. I order the respondent to refund the applicant the \$1,000.
21. 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 and \$11.00 for registered mail costs to serve the Dispute Notice, which I find to be reasonable dispute-related expenses.

## **ORDERS**

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,146.32, broken down as follows:

- a. \$1,000 as a refund of the deposit,
  - b. \$10.32 in pre-judgment interest under the *Court Order Interest Act*, from August 9, 2018 to the date of this decision, and
  - c. \$136 for \$125 in tribunal fees and \$11 for dispute-related expenses.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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