



Civil Resolution Tribunal

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File: SC-2019-002041

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Creighton-Kelly et al v. 2282476 Ontario Ltd.*, 2019 BCCRT 1027

B E T W E E N :

ALAN CREIGHTON-KELLY and CARMEN RODRIGUEZ

APPLICANTS

A N D :

2282476 Ontario Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a refund for a trip to China.
2. The applicants Alan Creighton-Kelly and Carmen Rodriguez say they paid the respondent 2282467 Ontario Ltd. for a trip called either “Yangtze on the Go”, “Sail

to the Far East” or “a Touch of the Exotic” (tour). The tour was to take place in China from March 4 to 18, 2019. The applicants then cancelled the tour due to their concerns about a travel advisory. The applicants seek a refund of the \$2,978 they paid the respondent.

3. The respondent says the applicants emailed on January 15, 2019 with concerns about the tour. If they had cancelled on that date, the respondent says the applicant would have been entitled to a partial refund of \$1,484.60. The respondent says the applicants were ‘no shows’. The respondent says the amounts paid were, by that point, non-refundable.
4. The applicants are self-represented. The respondent is represented by principal or employee Jill Ma.

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* (CRTA). 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. 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.
7. 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.

8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

9. The issues in this dispute are:
 - a. whether the respondent must refund the applicants for the tour and, if so,
 - b. what amount is appropriate?

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicants bear the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but only refer to them as I find necessary to provide context for my decision.
11. On May 25, 2018, the applicants booked the tour with the respondent. The applicants paid a \$600 deposit that day, and a further \$600 on June 19, 2018. On November 15, 2018 the applicants paid the \$1,778 balance. Altogether, the applicants paid the claimed \$2,978.00 to the respondent. In exchange, the respondent agreed to provide the tour in March 2019.
12. Based on the May 25, 2018 invoice, I find that the parties' agreement included these relevant conditions:
 - a. Cancellations must be in writing.
 - b. Cancellation of issued flight tickets before the outbound departure incur a \$350 charge per ticket.

- c. Cancellations 30-90 days before departure are subject to a penalty of \$600 plus 30% of the fare.
 - d. Cancellations within 7 days receive no refund.
13. Based on the flight ticket print-outs filed in evidence, I find that the applicants' air travel tickets were issued on January 12, 2019.
 14. On January 15, 2019, the applicants emailed the respondent cancelling their tour due to their concerns with a Canadian government travel advisory about China. This was 48 days before the tour's March 4, 2019 departure date.
 15. The respondent argues that, because the applicants would not agree to the resolve the issue on the terms it proposed, they were "no shows" for the tour and not entitled to any refund. I disagree. I have found that the January 15, 2019 email was written notice of cancellation. The fact that the parties could not agree on the refund amount does not change the fact of the cancellation.
 16. The applicants say that they were entitled to a full refund due to the Canadian government travel advisory. On May 14, 2018, ML, a complaints officer at the Travel Industry Council of Ontario (TICO) wrote to the respondent saying that if the Canadian government restricts travel to a destination, a travel agency must offer a full refund to affected travelers. However, if the government advisory does not restrict travel, the "travel agency may offer compensation based on the travel agencies booking terms and conditions." While that advice is based on Ontario law, I find that the travel advisory here does not require the respondent to offer a full refund, because it did not restrict travel.
 17. The applicants say that the respondent was slow to answer their questions after the agent that sold them the tour left the company. They say this poor communication was their other reason for cancelling. I find that the reason for the cancellation is not determinative. The written cancellation notice was given on January 15, 2019. The refund amount is dictated by the terms of the agreement between the parties.

18. Given that the applicants cancelled on January 15, 2019 with 48 days' notice before their tour's departure, I find the applicants are entitled to a refund less \$600 plus 30% of the fare. The refund, before considering the flight tickets, would be \$1,484.60. I have considered whether this represents a penalty or a genuine pre-estimate of damages. I find that it is a genuine pre-estimate of damages, given that tour operators incur organizational costs.
19. As well, the applicants cancelled after the flight tickets were issued. Under the agreement a \$350 penalty, per ticket, applies. This is a further \$700 penalty, bringing the penalty total to \$2,193.40. For these reasons, I order the respondent to pay the applicants a refund of \$784.60.
20. The applicant claims 5% interest from May 25, 2018. Since there was no agreement about contractual interest, I find that only pre-judgment interest under the *Court Order Interest Act* applies. This equals \$11.57 from November 15, 2018 to the date of this decision.
21. Under section 49 of the CRTA 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 \$175 in tribunal fees. They did not claim dispute-related expenses.

ORDERS

22. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$970.79, broken down as follows:
 - a. \$784.60 as a partial refund for the tour,
 - b. \$11.57 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 tribunal fees.
23. The applicants are entitled to post-judgment interest, as applicable.

24. Under section 48 of the CRTA, 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 CRTA, 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