



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2019-000528

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chauhan v. Best Look Blinds*, 2019 BCCRT 1029

B E T W E E N :

Shakuntal Chauhan

APPLICANT

A N D :

Best Look Blinds

RESPONDENT

A N D :

Shakuntal Chauhan

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant and respondent by counterclaim, Shakuntal Chauhan, paid \$3,000 to the respondent and applicant by counterclaim, Best Look Blinds (BLB), to install blinds at her house.
2. Ms. Chauhan says she only hired BLB to supply and install exterior blinds. She says the blinds BLB ordered from its supplier were not the appropriate material, and she wants BLB to refund her \$3,000.
3. BLB counterclaims and says it had a verbal contract with Ms. Chauhan to supply and install blinds for the interior and exterior of her house for \$6,700 plus tax. It says Ms. Chauhan's \$3,000 payment was a deposit. BLB says that after it ordered the custom blinds from its supplier Ms. Chauhan decided she no longer wanted them. BLB wants Ms. Chauhan to pay it \$3,944 for what it says is the balance of the parties' contract.
4. Ms. Chauhan is self-represented and BLB is represented by an employee or principal.

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. Ms. Chauhan has requested special accommodation from the tribunal for visual impairment. However, there is no indication that Ms. Chauhan's visual impairment prevented her from participating fully in this dispute by written submissions. Therefore, I find I can fairly decide this dispute based on written submissions.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a “she said, they said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
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 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.

ISSUE

10. The issue in this dispute is whether Ms. Chauhan is entitled to a refund of her \$3,000, or, whether she is required to pay BLB \$3,944 for the alleged balance of the parties’ contract.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, Ms. Chauhan must prove her claim on a balance of probabilities. This means I must find it is more likely than not that Ms. Chauhan's position is correct. Likewise, BLB is responsible for proving its counterclaim.
12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
13. The parties disagree about the nature and terms of their agreement. Ms. Chauhan says she hired BLB to supply and install exterior blinds on the solarium of her deck. She says that on September 25, 2018 BLB took measurements and quoted her \$3,000 for the exterior blinds which she paid when BLB returned the following day, September 26, 2018, on the condition that the blinds would be installed within 1 week. Ms. Chauhan says this was a verbal agreement.
14. Ms. Chauhan says that on September 26, 2018 BLB offered her a 50% discount on interior blinds and she reluctantly let BLB into her home to take measurements for interior blinds even though she did not want or need them. She submitted a photograph of a room inside her home showing that she already had interior blinds, and she says she had no reason to replace them.
15. In contrast, BLB says that on September 26, 2018 Ms. Chauhan verbally agreed to pay \$6,700 plus tax for the supply and installation of custom blinds for her entire home, both interior and exterior. BLB submitted undated handwritten notes with 38 different measurements. It says these are the measurements it took for the interior and exterior of Ms. Chauhan's home. BLB says the parties agreed it would install lighter coloured blinds for the interior and darker coloured blinds for the exterior. BLB says it never offers discounts, let alone 50% discounts, to its customers.
16. BLB submitted a September 26, 2018 invoice for \$6,510 including tax, \$3,000 of which was payable in advance. The invoice shows that measurements 1 to 17 and 35 to 38 were for light filtering blinds, and measurements 18 to 34 were for black out

blinds. The invoice does not specify which of these blinds were meant to be for the interior or exterior.

17. It is undisputed that on September 26, 2018 Ms. Chauhan paid BLB \$3,000 for blinds. Ms. Chauhan says \$3,000 was the total amount of their agreement and that BLB never presented her with any paperwork. However, she did not specifically address the invoice in evidence. As noted, BLB says the \$3,000 payment was only a deposit towards the larger \$6,510 total.
18. On September 27, 2018 Ms. Chauhan texted BLB asking it to bring samples and a catalogue to a meeting they had scheduled for the following morning. Later that day she texted BLB and said for the deck she wanted blinds that blocked the sun, and for the inside of the house she wanted blinds that did not block the sun. The parties did not submit evidence about the difference between the shade-blocking characteristics of exterior and interior blinds. However, I find this text message contradicts Ms. Chauhan's claim that she only ordered blinds for the house's exterior.
19. BLB says it provided Ms. Chauhan with a catalogue to select the type of blinds she wanted and says she went to BLB's store to select the colour of blinds. Ms. Chauhan says the meeting with BLB never happened and she never received a catalogue from them.
20. On balance, I find that Ms. Chauhan ordered blinds for both the exterior and interior of her home, and I find the invoice is the best evidence of the parties' agreement. I find that Ms. Chauhan meets the definition of consumer in the *Business Practices and Consumer Protection Act* (BPCPA), and BLB meets the definition of supplier in the BPCPA. I also find that the invoice is a future performance contract as defined in the BPCPA.
21. Ms. Chauhan says the day after she ordered the blinds she went to BLB's store to cancel her order and receive a refund, but BLB had already cashed her cheque and

the representative she had dealt with was not available at that time. BLB says Ms. Chauhan never came to its store after paying her \$3,000 deposit.

22. BLB says it installed 2 sets of blinds on September 28, 2018 and Ms. Chauhan does not dispute this. BLB did not specify whether these were exterior or interior blinds.
23. BLB says that the day after it ordered the materials for the blinds from its supplier, Ms. Chauhan changed her mind and wanted a different style of blinds. BLB says it changed its order with its supplier and prepared the new style of blinds for Ms. Chauhan. BLB submitted its invoice from its supplier dated October 4, 2018 for zebra blinds for \$3,700 USD. BLB says that once it pays its suppliers it cannot refund its customers. However, there is no evidence BLB communicated this policy to Ms. Chauhan, and I note the invoice does not indicate that the \$3,000 deposit was non-refundable.
24. Ms. Chauhan says zebra blinds are not appropriate for exterior blinds and that her deck required vertical blinds that would slide open to enable her to open the windows. However, she provided no evidence that the blinds BLB ordered from its supplier were different than the style of blinds she ordered from BLB. While the invoice indicates that some of the blinds would be light filtering and some of them would be blackout blinds, it does not otherwise specify the material or style of the blinds Ms. Chauhan ordered. Ms. Chauhan also provided no evidence to support her contention that zebra blinds were inappropriate for the exterior of her home
25. Ms. Chauhan said she did not hear from BLB until November 19, 2018 when it contacted her to install the blinds. BLB says that when it contacted Ms. Chauhan to arrange a time to install the blinds she informed them that she was out of the country. Ms. Chauhan says she was never out of the country and that she was recovering from a medical procedure in September 2018.
26. BLB says that after no contact from Ms. Chauhan for 3 months it went to her house to inquire about installing the blinds and she told BLB that she had changed her

mind and no longer wanted the blinds. BLB wants Ms. Chauhan to pay \$3,944, which it says is the balance of its contract. However, BLB's invoice in evidence is for \$6,510, therefore I find that according to BLB's own evidence the balance of the contract would be \$3,510, not \$3,944.

27. BLB says it cannot use Ms. Chauhan's blinds for another customer because they are custom made according to the measurements in her home. BLB submitted photos of what it says are Ms. Chauhan's custom-ordered blinds in boxes in storage.
28. While the precise chronology of events is in dispute, it is uncontested that at some point after ordering blinds and paying BLB \$3,000, Ms. Chauhan cancelled her order. The question is whether she is entitled to a refund, or whether she is required to pay BLB the balance of the invoice.
29. Section 19 of the BPCPA requires a future performance contract to include a detailed description and itemized purchase price of the goods to be supplied, as well as a detailed statement of the terms of payment. Section 23 (2) of the BPCPA requires a future performance contract to include the supply date, and the date on which the supply of goods will be complete. I find BLB's invoice does not include this required information.
30. Section 23 (5) of the BPCPA allows a consumer to cancel a future performance contract within 1 year of the date they receive the contract if it does not include the information required in sections 19 and 23 (2).
31. Section 54 of the BPCPA requires a consumer who wishes to cancel a future performance contract to give notice by any method that creates evidence of their intention to cancel the contract on a specific date. The parties do not dispute that Ms. Chauhan cancelled the contract, and it is undisputed that she cancelled it within one year of the date of the invoice. Therefore, I find Ms. Chauhan has met the cancellation requirements in section 54 of the BPCPA.

32. Section 27 of the BPCPA says that if a consumer cancels a contract, the supplier must refund the consumer within 15 days after the notice of cancellation has been given without deduction. Section 28 of the BPCPA requires a consumer who has cancelled a future performance contract to deliver any goods received under the contract to the supplier's business address, which relieves the consumer of their obligations under the contract.
33. I note the parties did not contemplate the BPCPA in their submissions. However, since there is no dispute that Ms. Chauhan cancelled the contract, and since the relevant provisions of the BPCPA are mandatory, I have determined it is unnecessary for the parties to make submissions on the application of the BPCPA in these circumstances.
34. Section 61 of the CRTA allows the tribunal to make any order or give any direction in relation to a tribunal proceeding that it thinks necessary to achieve the tribunal's objects in accordance with its mandate. Therefore, based on section 28 of the BPCPA and section 61 of the CRTA, I order Ms. Chauhan to return the 2 sets of blinds she received from BLB to its business address.
35. Under section 27 of the BPCPA, within 15 days of the date of this decision I order BLB to refund Ms. Chauhan \$3,000 plus interest and tribunal fees as set out below.
36. With respect to BLB's counterclaim, the invoice contains no term requiring Ms. Chauhan to pay the balance of the invoice if she cancelled her order. On the evidence before me and given the BPCPA provisions I find there is no legal basis to require Ms. Chauhan to pay BLB the invoice balance, or any amount. I dismiss BLB's counterclaim.
37. The *Court Order Interest Act* applies to the tribunal. Ms. Chauhan is entitled to pre-judgment interest on the amount owing calculated from September 26, 2018, which is the date of the invoice, to the date of this decision. This equals \$50.35.

38. 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. Since Ms. Chauhan was generally successful I find she is entitled to reimbursement of \$125 in tribunal fees. Since BLB was unsuccessful in its counterclaim I find it is not entitled to reimbursement of its tribunal fees. Neither party claims dispute-related expenses.

ORDERS

39. Within 15 days of the date of this order, I order Ms. Chauhan to return the 2 sets of blinds BLB installed on September 28, 2018 to BLB's address indicated on the Dispute Notice during business hours.

40. Within 15 days of the date of this order, I order BLB to pay Ms. Chauhan a total of \$3,175.35, broken down as follows:

- a. \$3,000 for reimbursement of the deposit on the blinds,
- b. \$50.35 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in tribunal fees.

41. Ms. Chauhan is entitled to post-judgment interest, as applicable.

42. I dismiss BLB's counterclaim.

43. 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.

44. 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.

Sarah Orr, Tribunal Member