



# Civil Resolution Tribunal

Date Issued: May 5, 2020

File: SC-2019-008756

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stephenson v. Rob Elgie (dba Squamish Custom Millwork)*, 2020 BCCRT  
490

B E T W E E N :

TODD STEPHENSON

**APPLICANT**

A N D :

ROB ELGIE (Doing Business As SQUAMISH CUSTOM MILLWORK)  
and JOSHUA MEILINGER (Doing Business As MEILINGER WOOD  
DESIGN)

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This is a dispute about an order for custom-made tables. The applicant, Todd Stephenson, purchased wood from the respondent, Joshua Meilinger (doing business as Meilinger Wood Design), for \$2,830 and hired the respondent, Rob

Elgie (doing business as Squamish Custom Millwork), to custom build the tables for an additional \$4,725, which he paid a \$2,000 deposit towards. However, Mr. Elgie never finished the project. The applicant seeks \$4,830 from the respondents.

2. Mr. Meilinger says he fulfilled his end of the agreement by supplying the wood to Mr. Elgie and denies it owes any money to the applicant.
3. Mr. Elgie did not file a Dispute Response as required and is in default, which I will address in more detail below.
4. The applicant and Mr. Meilinger are both 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* (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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue is whether the applicant is entitled to a refund from either Mr. Meilinger or Mr. Elgie and if so, the amount.

## **EVIDENCE AND ANALYSIS**

10. Generally, in a civil claim, the applicant bears the burden of proof on a balance of probabilities. However, where the issue between the parties involves bailment, the burden shifts to the respondent, as explained below. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
11. The applicant wanted 2 custom built wood tables and purchased wood from Mr. Meilinger for \$2,830. At Mr. Meilinger's suggestion, the applicant hired Mr. Elgie to build the tables. Mr. Meilinger delivered the wood to Mr. Elgie as instructed by the applicant. I find the applicant and Mr. Meilinger had a straight forward purchase agreement. Even though Mr. Meilinger did not deliver the wood to the applicant, I find he still fulfilled his obligations under the agreement because he delivered the wood to Mr. Elgie on the applicant's instructions. For this reason, I dismiss the applicant's claim against Mr. Meilinger.
12. This brings me to the transaction between the applicant and Mr. Elgie. Mr. Elgie did not file a Dispute Response, despite being properly served. Therefore, as noted above, he is in default. Where a respondent is in default, liability is assumed. This means that because Mr. Elgie refused to participate, it is generally reasonable to assume that the applicant's position is correct about the issue at hand. As a result, based on the evidence before me, I find the following:

- a. The applicant met with Mr. Elgie in April 2019 and Mr. Elgie agreed to build 2 tables using the wood supplied by Mr. Meilinger for \$4,725 inclusive of GST.
  - b. Mr. Elgie told the applicant the tables would be completed in 1 month.
  - c. On April 9, 2019, the applicant paid a \$2,000 deposit to Mr. Elgie by e-transfer.
  - d. Mr. Elgie received the wood the applicant purchased from Mr. Meilinger. The parties did not provide the date of delivery.
  - e. On May 9, 2019 the applicant emailed Mr. Elgie to check on when the tables would be ready. On May 10, 2019 Mr. Elgie emailed the applicant that the tables should be ready in “a week or so”.
  - f. The applicant did not receive the tables and made several attempts to contact Mr. Elgie but he did not respond.
  - g. Mr. Elgie did not deliver the tables or return the wood to the applicant.
13. I find that Mr. Elgie breached the agreement by not manufacturing or delivering the tables by the agreed deadline. There is no evidence that the \$2,000 deposit the applicant paid Mr. Elgie was non-refundable. I find that since Mr. Elgie breached the agreement, the applicant is entitled to a refund of the \$2,000 deposit.
14. However, this does not account for the wood that the applicant supplied to Mr. Elgie. I find a bailment relationship was created between the applicant and Mr. Elgie when Mr. Elgie received the wood from Mr. Meilinger. The law of bailment is about the obligations on one party to safeguard another party’s possessions. The bailor (here, the applicant) is a person who gives the goods or possessions and the bailee (here, Mr. Elgie) is the person who holds or stores them. The bailee has to return the bailed goods upon demand from the bailor. I find the applicant made numerous unsuccessful attempts to contact Mr. Elgie about the tables but Mr. Elgie did not reply.

15. The court in *Robertson v. Stang*, 1997 CanLII 2122 held a bailee is responsible for compensating the bailor for the actual value of the goods that were left with the bailee. I find the wood's actual value was the price the applicant paid for it, which was \$2,380. Since Mr. Elgie neither completed the tables nor returned the wood to the applicant, I find he must pay \$2,380 to the applicant in addition to refunding the \$2,000 deposit.
16. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the deposit and price of the wood from April 9, 2019, the date the applicant paid the deposit to SCM, to the date of this decision. This equals \$101.67.
17. 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 applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant has not claimed any dispute-related expenses.

## **ORDERS**

18. Within 14 days of the date of this order, I order the respondent, Rob Elgie (doing business as Squamish Custom Millwork), to pay the applicant a total of \$5,106.67, broken down as follows:
  - a. \$4,830 in debt,
  - b. \$101.67 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in tribunal fees.
19. I dismiss the applicant's claim against the respondent, Joshua Meilinger (doing business as Meilinger Wood Design).
20. The applicant is entitled to post-judgment interest, as applicable.

21. 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.
22. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
23. 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.

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Rama Sood, Tribunal Member