



# Civil Resolution Tribunal

Date Issued: June 4, 2020

File: SC-2019-009114

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Norihiro v. Razer USA Ltd.*, 2020 BCCRT 618

Default decision – non-compliance

BETWEEN:

AUSTIN NORIHIRO

**APPLICANT**

AND:

RAZER USA LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's mandatory directions as required, as discussed below.

2. This dispute is about a defective keyboard the applicant received from the respondent. The applicant seeks a \$208.80 refund, having already returned the defective keyboard to the respondent. The applicant also seeks \$3.00 for a bank currency exchange administration fee.
3. The applicant is self-represented, and the respondent is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. Section 36 of the *Civil Resolution Tribunal Act (CRTA)* applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. Hear the dispute in accordance with any applicable rules.
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. The case manager has referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.
6. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the 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.

7. Where permitted under section 118 of the CRTA, the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. For the reasons that follow, I have allowed the applicant's claim.

## **ISSUES**

9. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation, given its non-compliance.
10. The second issue is to what extent I should order the respondent to pay the applicant a \$208.80 refund, plus a \$3.00 bank fee.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

11. My June 1, 2020 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.
12. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and tribunal rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4, despite multiple attempts by the case manager to contact it with a request for a reply.
13. The respondent filed its Dispute Response on February 25, 2020, which included its email address to be used for this dispute. The case manager then made the following attempts at contact:

- a. By email on March 13, 2020 requesting a private phone call on March 16, 2020 at 1:00 p.m. The case manager requested the respondent confirm availability for the call as soon as it received the email. The case manager also advised that parties are required to respond to case manager requests within 48 hours. The respondent did not reply.
  - b. By phone on March 16, 2020 for the scheduled private call. The case manager left a message and sent an email requesting the respondent return the call. The email stated that a response was required within 48 hours. No response to the message or the email was received.
  - c. By email on March 20, 2020 confirming the respondent did not respond to the private call request and requesting a response by March 25, 2020 to discuss the claim.
  - d. By phone on March 31, 2020 leaving a voicemail message requesting a response by April 3, 2020.
  - e. By email on April 7, 2020, informing the respondent that this was a final warning and that the respondent had to contact the case manager by April 17, 2020. The email indicated that if the respondent did not respond that the case manager may refer the dispute to a tribunal member who may hear and decide the dispute without the respondent's participation.
  - f. By letter dated April 24, 2020, sent by Canada Post on April 27, 2020, setting out the steps the case manager had taken to contact the respondent and providing a May 22, 2020 deadline to contact the case manager. The letter also stated that the case manager may refer the dispute to a tribunal member who may hear and decide the dispute without the respondent's participation. No response was received.
14. The case manager then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

***Should the tribunal hear the applicant's dispute without the respondent's participation?***

15. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why it failed to communicate with the tribunal as required. I find the case manager made a reasonable number of contact attempts. The respondent was informed in writing at the beginning of the facilitation process that it must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. The respondent provided its contact information on the February 25, 2020 Dispute Response. I find it is more likely than not that the respondent knew about the case manager's contact attempts and failed to respond.

16. Rule 1.4(2) states that if a party is non-compliant, the tribunal may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

17. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the tribunal will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;

- b. The stage in the facilitation process at which the non-compliance occurs;
  - c. The nature and extent of the non-compliance;
  - d. The relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. The effect of the non-compliance on the tribunal's resources and mandate.
18. In the circumstances of this case, I find it is appropriate to hear the applicant's dispute without the respondent's further participation, relying on the information and evidence provided by the applicant and in the respondent's Dispute Response form. My reasons are as follows.
19. First, this dispute does not affect persons other than the named parties.
20. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing a response.
21. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
22. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to him.
23. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.

24. In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
- a. The extent of the non-compliance is significant;
  - b. The applicant is not prejudiced; and
  - c. The need to conserve the tribunal's resources.

***Is the applicant entitled to a \$208.80 refund, plus a \$3.00 bank fee?***

25. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
26. Where a respondent filed a Dispute Response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against it. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.
27. Having said that, I reviewed the Dispute Response, because it was filed before the respondent's non-compliance. The respondent did not dispute that the keyboard was damaged upon delivery and agreed with the applicant's request for a \$208.80 refund. The respondent disagreed with the \$3.00 bank currency exchange fee.
28. The applicant says that the \$3.00 bank fee is required because the respondent is unable to provide a cheque in Canadian dollars. I find that this expense is reasonable because the applicant should not have to pay anything to obtain a full refund for a defective product.
29. I find the respondent must pay the applicant \$211.80 as a refund for the defective keyboard and a bank fee.

30. I also find that the applicant is entitled to interest under the *Court Order Interest Act* (COIA). The applicant purchased the keyboard in January 2019, so I have chosen February 1, 2019 as a reasonable date from which to calculate pre-judgment interest. This equals \$5.54.
31. According to the tribunal rules, I find the applicant as the successful party is entitled to reimbursement of his paid tribunal fees in the amount of \$125.00.

## **ORDERS**

32. Within 21 days of the date of this order, I order the respondent to pay the applicant a total of \$342.34, broken down as follows:
- a. \$211.80 as reimbursement for a defective keyboard and bank fee,
  - b. \$5.54 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in tribunal fees.
33. The applicant is entitled to post-judgment interest, as applicable.
34. 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.
35. As set out in 58.1(3) of the CRTA, a party may only enforce this order if the time for making a notice of objection has passed and a Notice of Objection has not been filed. The non-compliant party has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

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Kristin Gardner, Tribunal Member



