



Civil Resolution Tribunal

Date Issued: June 30, 2020

File: SC-2020-000965

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morissette v. Rausch*, 2020 BCCRT 731

B E T W E E N :

RICHARD MORISSETTE

APPLICANT

A N D :

SPENCER RAUSCH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This small claims dispute is about the purchase of goods. The applicant, Richard Morissette, was interested in purchasing vintage racing motors and parts. The respondent, Spencer Rausch, allegedly knew the third party seller and agreed to act as the broker between Mr. Morissette and the seller. Mr. Morissette says although he sent \$4,800 to Mr. Rausch, he never received the parts. Mr. Morissette says Mr. Rausch refunded \$150 and so he seeks a refund of the remaining \$4,650 from Mr. Rausch.
2. In his Dispute Response filed at the outset of this proceeding, Mr. Rausch only stated “I bought race items for a friend now I have to sell them to return his funds” (reproduced as written). Mr. Rausch chose not to provide any evidence or submissions for this decision, despite numerous opportunities to do so. I address this issue further in my reasons below.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
5. The CRT 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.

6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Mr. Morissette is entitled to a refund of \$4,650.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Morissette bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. Mr. Morissette says he met Mr. Rausch on an online forum. Mr. Rausch told Mr. Morissette that he knew of a seller who had some vintage racing motors and parts (parts) that Mr. Morissette was interested in buying. Neither party identified the seller and the seller is not named as a party to this dispute.
11. Mr. Morissette says the seller agreed through email that Mr. Morissette would purchase the parts, with Mr. Rausch acting as a broker. Although Mr. Morissette did not provide a copy of the email, I find nothing turns on this. Mr. Morissette says Mr. Rausch's role was to obtain money from Mr. Morissette and hold it until the seller sent Mr. Rausch the parts. Once Mr. Morissette was satisfied with the parts, Mr. Rausch would send them to Mr. Morissette and the money to the seller. In exchange, the seller would provide Mr. Rausch with several motors as payment.

12. From December 1, 2017 to February 15, 2018, Mr. Morissette e-transferred a total of \$4,800 to Mr. Rausch. Mr. Rausch informed Mr. Morissette that he received the money. However, Mr. Rausch did not send any parts to Mr. Morissette.
13. From January 4, 2018 to December 27, 2019, Mr. Morissette exchanged over 70 text messages with Mr. Rausch. Some of the text messages Mr. Morissette provided were undated. However, from their context, I infer they were related to this transaction. Other texts indicated the month and day but not the year they were sent. I infer, again from the context, they were sent in 2019.
14. In the texts, Mr. Morissette made numerous requests for the parts but Mr. Rausch did not provide them, any proof that he had them, or any proof that he was in contact with the seller. On May 18, 2018, Mr. Morissette instructed Mr. Rausch to return the \$4,800. Mr. Rausch agreed to refund the money but did not do so. From May 2018 to December 2019, Mr. Rausch texted Mr. Morissette that he attempted to refund the \$4,800 by e-transfers, wire transfers, and sending money drafts by mail but was unsuccessful. He also stated that he did not want to use PayPal because it charged \$104. Mr. Morissette kept following up with Mr. Rausch and even instructed Mr. Rausch to deduct up to \$150 from the \$4,800 that was owed for the cost of transferring the money. Mr. Morissette says Mr. Rausch e-transferred \$150 to him at some point but did not provide the date.
15. On balance, I find Mr. Morissette's evidence supports his claim that he sent Mr. Rausch \$4,800 for parts and, although he agreed to refund the \$4,800 when the transaction did not complete, Mr. Rausch only refunded \$150. Given that Mr. Rausch chose not to provide any evidence or submissions and provided only a vague Dispute Response I draw an adverse inference against him. This means I find it is appropriate to assume Mr. Morissette's evidence is correct. I find Mr. Morissette is entitled to reimbursement of the \$4,650 claimed.

INTEREST, CRT FEES, AND EXPENSES

16. The *Court Order Interest Act* applies to the CRT. Mr. Morissette is entitled to pre-judgment interest on the \$4,650 from May 18, 2018, the date Mr. Morissette first requested the refund, to the date of this decision. This equals \$176.60.
17. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Morissette is entitled to reimbursement of \$125 in CRT fees. Mr. Morissette did not claim dispute-related expenses.

ORDERS

18. Within 14 days of the date of this order, I order the respondent, Spencer Rausch, to pay the applicant, Richard Morissette, a total of \$4,951.60, broken down as follows:
 - a. \$4,650 in debt,
 - b. \$176.60 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. Under section 48 of the CRTA, the CRT 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 CRT's final decision.
21. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the

state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

22. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Rama Sood, Tribunal Member