



Civil Resolution Tribunal

Date Issued: September 18, 2020

File: SC-2020-003957

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barabad v. TM Tilemart Ltd.*, 2020 BCCRT 1062

BETWEEN:

RICARDO BARABAD

APPLICANT

AND:

TM TILEMART LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the purchase of tiles for a home renovation.
2. The applicant, Ricardo Barabad, purchased vinyl tiles from the respondent, TM Tilemart Ltd. (Tilemart), and says he was told he would be able to return any unused product to Tilemart for a full refund. Mr. Barabad says that he tried to return

13 boxes of tile but that Tilemart refused to refund him any money. Mr. Barabad claims \$1,092 for the “approximate” amount owed for the unused tiles he wants to return.

3. Tilemart says that the tiles Mr. Barabad purchased were a special order and not eligible for a refund.
4. Mr. Barabad is self-represented. Tilemart is represented by a principal or employee.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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

9. The issue in this dispute is whether Mr. Barabad is entitled to a \$1,092 refund for unused tiles.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Barabad bears the burden of proof on a balance of probabilities. I have only referenced the evidence and arguments to the extent necessary to explain my decision. I note that while Tilemart filed a Dispute Response and submitted evidence, it chose not to make any submissions, despite being provided the opportunity to do so.
1. On February 29, 2020, Mr. Barabad purchased tiles from Tilemart. The receipt in evidence shows the product's total price was \$3,985.20 plus tax, for 1,080 tiles at \$3.69 each. The receipt also sets out Terms and Conditions of the sale, including the following relevant terms:
 - a. No refunds or exchange on materials sold as seconds, clear outs, discontinued items.
 - b. No returns on special order (i.e. items not in stock).
 - c. Accepted returns are subject to a 30% restocking fee, must be in full unopened boxes, and returned within 15 days of purchase.
11. Mr. Barabad says that the Tilemart sales associate assured him that he could return any unused product for a full refund. He says when he finished his renovation project, he had about 13 boxes of excess tiles.
12. It is undisputed that Mr. Barabad went to Tilemart on or about March 10, 2020 and tried to return the 13 boxes of tiles, but Tilemart told him that it was not accepting any returns due to the COVID-19 pandemic. It is also undisputed that Mr. Barabad tried again to return the tiles on May 19, 2020 and that Tilemart told him that no

returns were available but offered him an in-store credit. Mr. Barabad then called the Tilemart office and a manager told him Tilemart would not accept any returns.

13. Tilemart says that when Mr. Barabad first tried to return the tiles, he wanted to exchange them for a different colour. I find nothing turns on the reason that Mr. Barabad wanted to return the tiles. Rather, the issue is whether the tiles Mr. Barabad bought can be returned for a refund, regardless of the reason.
14. Tilemart says that the tiles are not eligible for a refund because they were a special order. As noted on the receipt, Tilemart does not accept returns on special orders. I note that Mr. Barabad's receipt shows the purchased product under the bold heading "Non-Stock". While neither party made any submissions about the significance of this term on the receipt, I find it is more likely than not that the term "Non-Stock" means the purchased product was "not in stock". Mr. Barabad's evidence and submissions do not address whether the tiles he purchased were an in-stock purchase or a special order.
15. It is not clear on the evidence whether Tilemart's repeated refusal to accept Mr. Barabad's tiles for a refund was based solely on a change in its return policy due to COVID-19, or whether its position that the tiles were a special order was also a factor. In any event, I find Tilemart's offer to provide Mr. Barabad with an in-store credit for his unused tile is not determinative of whether the tiles would otherwise have been an "accepted" return, if not for COVID-19. It is possible that Tilemart's in-store credit offer was an offer to alter the condition of no returns on special orders.
16. In any event, I find that Mr. Barabad declined the offer for an in-store credit. Therefore, I find that Tilemart is not bound by that offer and the Terms and Conditions of the tiles' sale, as set out on the receipt, apply.
17. Mr. Barabad bears the burden of proving the product he purchased is eligible for a refund. I note that Mr. Barabad's submission that he was told he could return any unused product for a full refund, is contrary to Tilemart's return policy as set out on its receipt, even for "accepted" returns. Given my finding that the receipt reflects the

purchased tiles were “not in stock” and the absence of any contrary evidence that the tiles were an in-stock purchase or would otherwise be considered an “accepted” return, I find Mr. Barabad has failed to meet his burden and I dismiss his claims.

18. I note that even if I had found Mr. Barabad’s unused tile was eligible for a refund, I would have found that Mr. Barabad failed to prove his damages. He says he has 13 boxes of unused tiles but did not provide evidence of how many tiles are in a box or the cost of each box. The receipt sets out only the cost per tile. Therefore, I would have dismissed Mr. Barabad’s damages claim in any event.

19. 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. Mr. Barabad was unsuccessful and so I dismiss his claim for CRT fees. Tilemart did not pay any fees and neither party claimed any dispute-related expenses, so I make no order.

ORDER

20. I dismiss Mr. Barabad’s claims and this dispute.

Kristin Gardner, Tribunal Member