



# Civil Resolution Tribunal

Date Issued: December 22, 2020

File: SC-2020-004414

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fletcher v. Wilson*, 2020 BCCRT 1449

B E T W E E N :

DONNA MARIE FLETCHER

**APPLICANT**

A N D :

LEEANN WILSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about the purchase of a bed.
2. The applicant Donna Marie Fletcher says she paid the respondent Leeann Wilson \$5,000 for a bed that was never provided. Ms. Fletcher asks for an order that Ms. Wilson refund her the \$5,000.

3. Ms. Wilson says Ms. Fletcher did not make “the deal” with her. In her Dispute Response filed at the outset of this proceeding, Ms. Wilson denied receiving money from Ms. Fletcher, but in later submissions she admits receiving \$5,000. Ms. Wilson also says there were 3 attempts to deliver the bed to Ms. Fletcher, but no one was home. Ms. Wilson asks me to dismiss the dispute.
4. The parties are each self-represented.

## **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). Section 2 of the CRTA states that 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 the dispute’s parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
7. Section 42 of the CRTA says 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 Ms. Wilson must refund Ms. Fletcher the claimed \$5,000 purchase price for a bed.

## **EVIDENCE AND ANALYSIS**

10. In this civil claim, Ms. Fletcher, as applicant, bears the burden of proof on a balance of probabilities. Ms. Wilson did not provide any evidence, despite being given opportunities to do so. I have reviewed Ms. Fletcher's evidence, and submissions from both parties, but only refer to them as I find necessary to explain my decision.
11. The parties agree to the following facts:
  - a. Ms. Wilson agreed to help Ms. Fletcher source a new bed.
  - b. Ms. Wilson informed Ms. Fletcher that she knew someone who sold new beds at discounted prices. Ms. Wilson offered to facilitate the purchase.
  - c. In February 2019, Ms. Fletcher paid Ms. Wilson \$2,500 as a "down payment" on the \$5,000 total price of the bed.
  - d. In May 2019, Ms. Fletcher paid Ms. Wilson a further \$2,500, the remaining balance of the \$5,000 purchase price.
  - e. Ms. Fletcher has not received delivery of the bed.
  - f. Ms. Wilson has not provided Ms. Fletcher with contact information for the people she describes as the "sellers of the bed."
12. Ms. Wilson says there were 3 attempts to deliver the bed, but that Ms. Fletcher was not at home. Ms. Fletcher says someone texted her to meet on the Easter long

weekend about the bed, but she could not reach anyone at that number. Ms. Fletcher says no delivery dates were set up. Because Ms. Wilson provided no independent evidence of any delivery attempts, I prefer Ms. Fletcher's evidence. I find that there were no attempts to deliver the bed.

13. On the issue of delivery, section 36 of the *Sale of Goods Act* (SGA) provides that delivery to a carrier is deemed delivery to a buyer, unless there is evidence to the contrary. SGA section 41 provides that a buyer may be liable for refusing to take delivery of goods within a reasonable time. I find that Ms. Wilson did not prove that the bed was delivered to a carrier, nor that Ms. Fletcher refused to take delivery.
14. Ms. Wilson agrees that Ms. Fletcher paid her \$5,000 and received nothing in return. Ms. Wilson's submission is that, because she passed the \$5,000 on to some unknown person who was going to deliver the bed, she not responsible for the debt.
15. Ms. Wilson has not proven that she was acting as an agent for anyone else. In text messages between the parties, Ms. Wilson refused to provide the name or contact information of the third-party for whom she said she was brokering the bed sale.
16. Even if Ms. Wilson is an agent for an undisclosed principal, the law of agency provides that an applicant can sue an agent where the agent's principal is not disclosed. Put another way, an undisclosed principal's agent contracts with the third party personally, and so the agent may be sued under the contract.
17. I am left with a situation where Ms. Wilson took \$5,000 from Ms. Fletcher on the understanding that it was payment for a bed. When no bed was provided, Ms. Fletcher requested a refund. I find that Ms. Wilson is personally liable and must refund Ms. Fletcher the \$5,000. Whether Ms. Wilson then has a claim against some third-party is beyond the scope of this dispute.
18. The *Court Order Interest Act* applies to the CRT. Ms. Fletcher is entitled to pre-judgment interest on the \$5,000 from May 1, 2019, the date of the second payment, to the date of this decision. This equals \$160.81.

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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in CRT fees. Ms. Fletcher did not claim dispute-related expenses.

## ORDERS

20. Within 30 days of the date of this order, I order Ms. Wilson to pay Ms. Fletcher a total of \$5,335.81, broken down as follows:
- a. \$5,000 in debt as a refund for the bed purchase,
  - b. \$160.81 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 CRT fees.
21. Ms. Fletcher is entitled to post-judgment interest, as applicable.
22. 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. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
23. 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.

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Julie K. Gibson, Tribunal Member