



# Civil Resolution Tribunal

Date Issued: April 28, 2021

File: SC-2020-009011

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Paul v. Bear Country Property Management (2018) Ltd.*, 2021 BCCRT 446

B E T W E E N :

TIMOTHY PAUL

**APPLICANT**

A N D :

BEAR COUNTRY PROPERTY MANAGEMENT (2018) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a hotel reservation deposit.
2. The applicant, Timothy Paul, paid a \$573.04 deposit on October 4, 2020 to book a hotel room from the respondent, Bear Country Property Management (2018) Ltd. (Bear). The booking was for December 20 – 24, 2020. On November 4, 2020, Mr.

Paul cancelled his reservation and says Bear unreasonably refused to refund his deposit. Mr. Paul seeks reimbursement of his \$573.04 paid deposit.

3. Bear says Mr. Paul agreed to its cancellation policy when he made his reservation, and under the cancellation policy Mr. Paul is not entitled to a refund of his paid deposit.
4. Mr. Paul is self-represented. Bear is represented by an 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). 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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 Bear must reimburse Mr. Paul's \$573.04 deposit.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Paul must prove his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Mr. Paul owns a vacation condominium at Sun Peaks Resort, which sleeps 4 people. He says he planned to host another family from December 20 to 24, 2020, so he reserved a hotel room to accommodate his guests during that period. It is undisputed that on October 4, 2020, Mr. Paul reserved a room online through Bear's website and paid Bear a \$573.04 deposit. The evidence shows the deposit amount equaled the cost of the first nights' rental, including taxes.
12. Mr. Paul says his own condominium was flooded on November 2, 2020, and it was not going to be habitable by December. So, he says he called Bear on November 3, 2020 to cancel his reservation. Mr. Paul says Bear directed him to email his cancellation request, which he did on November 4, 2020. When he did not receive a refund of his deposit, Mr. Paul followed up with Bear, and he learned that due to the timing of his cancellation, his deposit was non-refundable.
13. Mr. Paul admits that when he made the online reservation, he clicked a box acknowledging that he agreed to the stated terms and conditions. Mr. Paul submitted a screenshot of the booking checkout page, showing the following cancellation policy he says he agreed to (capital letters in the original):

WINTER 2020/21 CANCELLATION POLICY: If you cancel your reservation MORE than 30 days prior to your expected arrival date, an amount equal to your advance deposit is forfeited. Cancellations made less than 30 days prior to your arrival will result in forfeiture of full amount. In the event that a reservation is altered by either a later arrival date or an earlier departure date, there will be no refund made to charges already put through on your credit card.

14. The evidence shows that Mr. Paul received an October 4, 2020 email from Bear confirming his reservation details. The email included a section with the heading “IMPORTANT”, under which it stated: “Make sure to read our conditions and policies for occupancy and cancellation attached herewith!”. The email attachment was titled “Conditions, Policies and Procedures for Occupancy”. The cancellation policy as set out in these emailed terms was (capital letters in the original):

WINTER CANCELLATION POLICY: If you cancel your winter reservation before October 31st, 2020 we would refund your advanced deposit minus \$100 + tax administration fee. If you cancel your winter reservation after October 31st, 2020 and you are arriving MORE than 30 days prior to your expected arrival date, an amount equal to your advance deposit is forfeited. Cancellations made less than 30 days prior to your arrival will result in forfeiture of full amount. In the event that a reservation is altered by either a later arrival date or an earlier departure date, there will be no refund made to charges already put through on your credit card.

15. Mr. Paul argues that he did not accept the emailed cancellation policy, which added the terms about cancelling before or after October 31, 2020. He says these terms were not included in the online version of the booking terms and conditions that he accepted. I find nothing turns on the difference between the online cancellation policy Mr. Paul agreed to and the printed policy he received in his email confirmation. He does not dispute that he cancelled his reservation more than 30 days before his

expected arrival date. I find under the terms of either version of the cancellation policy, Mr. Paul's deposit would be forfeited by cancelling on November 4, 2020.

16. As noted, Mr. Paul does not deny that he read and understood the cancellation policy before he finalized his reservation. However, even if he had failed to read the online version of the terms and conditions, I find that they formed part of his contract with Bear because they were prominently displayed and reasonably brought to Mr. Paul's attention before he entered into the contract: see *Century 21 Canada Limited Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196. While Mr. Paul now submits that Bear's reservation terms and conditions were unreasonable, I find that he accepted the cancellation policy as it was stated on the reservation website, and he was bound by its terms. Given Mr. Paul cancelled more than 30 days before his scheduled arrival date, I find Bear was entitled to keep Mr. Paul's paid deposit.
17. Mr. Paul also argues that his contract with Bear was frustrated because the flood in his own condominium was unforeseeable, and the flood was the reason he cancelled his reservation.
18. A contract is frustrated when an unforeseeable event occurs, for which the parties made no provision, and makes performance of the contract something radically different from that which was originally agreed: see *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53. The unforeseen circumstances must destroy a fundamental aspect or purpose of the contract, making it truly pointless to continue to perform the terms of the contract, not just inconvenient, undesirable, or involving increased hardship or expense for one or both parties. Put differently, a contract is frustrated if its performance is rendered impossible or impracticable by an unforeseeable event for which neither party was at fault: *Wilkie v. Jeong*, 2017 BCSC 2131.
19. I find that the doctrine of contract frustration does not apply to the circumstances here. The purpose of the contract was for Bear to provide Mr. Paul with a hotel room. The contract was not dependent upon Mr. Paul's guests arriving or his condominium being habitable. While Mr. Paul's flood was unforeseen, it did not prevent either party from

fulfilling the terms of their contract. Bear still had the hotel room available and Mr. Paul could have gone to stay in it. The flood simply made it undesirable for Mr. Paul to perform the contract's terms.

20. I note that Mr. Paul also submits that after bringing this dispute, the government issued a public health order restricting non-essential travel due to the COVID-19 pandemic. Mr. Paul suggests that Bear may not have accepted Mr. Paul's guests at the hotel in any event. I find I do not have to consider whether the pandemic frustrated the parties' contract because it is undisputed that Mr. Paul cancelled the reservation due to his flood, not the pandemic.
21. I find Mr. Paul's flood did not frustrate his contract with Bear. Therefore, I find Mr. Paul remains bound by the contract's cancellation policy, under which his deposit was forfeited. I dismiss Mr. Paul's claims.
22. 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. Paul was unsuccessful and so I dismiss his claim for CRT fees. Bear did not pay any CRT fees and neither party claimed any dispute-related expenses, so I make no order.

## **ORDER**

23. I order Mr. Paul's claims, and this dispute, dismissed.

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Kristin Gardner, Tribunal Member