



Civil Resolution Tribunal

Date Issued: May 27, 2021

File: SC-2020-007969

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fortin v. Peacock dba The Rock and River Rustic Resort*, 2021 BCCRT 571

B E T W E E N :

SYLVAIN FORTIN

APPLICANT

A N D :

TAMMY PEACOCK (Doing Business As THE ROCK AND RIVER
RUSTIC RESORT)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Sylvain Fortin, stayed at a campsite owned and operated by the respondent, Tammy Peacock (Doing Business As The Rock and River Rustic Resort).

2. Mr. Fortin paid \$1,050 for 30 days of camping and only used 9 of those days. Miss Peacock provided a credit for the other 21 days. Mr. Fortin says Miss Peacock refused to honour that credit, and refused to let him stay at the campground at all. He seeks \$725, representing 21 days at \$35 per day.
3. Miss Peacock says she has a “no refund” policy, and her refusal to honour the credit was justified for various reasons, including Mr. Fortin’s conduct and lost profit.
4. Both parties are self-represented. For the reasons that follow, I find Mr. Fortin is entitled to \$725 in damages for breach of contract.

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. 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.

Appropriate process

9. On March 25, 2021, the CRT issued a preliminary decision that this dispute should continue through the CRT process. The question was whether the CRT should refuse to resolve the dispute under section 11(1) of the CRTA because another legally-binding process was more appropriate. Miss Peacock alleged that she had started a claim against Mr. Fortin in the BC Provincial Court (BCPC), and was considering starting a claim in BC Supreme Court (BCSC). The CRT member was not persuaded that Miss Peacock had filed a claim in the BCPC and found that Miss Peacock's allegations of harassment, libel and extortion that could be heard by the BCSC were not closely related to Mr. Fortin's CRT claim. Although that preliminary decision is not binding on me, I agree with the CRT member's reasoning. As Miss Peacock has not provided any additional evidence or argument about her alleged BCPC or BCSC claims, I find it is appropriate to adjudicate this dispute.

Missing submissions

10. Miss Peacock provided submissions by email. She indicated that the submissions were 1 of 2 parts. CRT staff emailed Miss Peacock and asked her to confirm whether she had additional submissions, but she did not respond. The CRT then asked Mr. Fortin for his final reply. Although I am aware that Miss Peacock says she had trouble navigating the CRT's online portal, CRT staff accommodated her by allowing her to email her submissions. As she emailed part 1 of her submissions, I see no reason she could not have emailed part 2, particularly since the CRT staff contacted her about it and she did not respond. I find that Miss Peacock had an adequate opportunity to provide her submissions.

Oral hearing request

11. Part of Miss Peacock's submissions included a request for an oral hearing. Rather, she says she has "great difficulty" navigating the CRT's online system and wishes to be heard by a live voice and to be understood.
12. Mr. Fortin does not address the oral hearing request but says Miss Peacock has been granted extensions at every step of the process, causing delays and making an "absolute mockery" of the process.
13. Miss Peacock provided no details about why she has difficulty navigating the CRT's online system, or what aspect of it she found challenging. She was able to provide evidence by email. Based on the evidence before me, she was clearly proficient with email and text communication. In the circumstances, I find that Miss Peacock has had a fair opportunity to participate. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions based on the evidence and written arguments before me.

ISSUE

14. The issue in this dispute is whether Miss Peacock's agreement to provide a 21-day campsite credit was binding, and if so, given she has refused to provide the credit, what remedy is appropriate?

EVIDENCE AND ANALYSIS

15. As the applicant in this civil dispute, Mr. Fortin must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
16. The essential facts are not in dispute and are documented in the parties' emails and texts. From that evidence, I make the following findings of fact:

- a. On or around August 3, 2020, Mr. Fortin phoned and emailed Miss Peacock about booking a campsite for him and his family of 4 starting August 22, for 7 days.
- b. Although Mr. Fortin was only booking for his family, both parties understood that he was also part of a work crew that planned to stay at the same campground at some point following Mr. Fortin's stay, at a date to be determined.
- c. Mr. Fortin paid a \$525 deposit, being half the cost of \$1,050 for 30 nights at \$35 per night. Miss Peacock confirmed the reservation for 30 days starting August 22. She said the balance owing was due before arrival.
- d. Mr. Fortin agreed to the camp rules and cancellation policy. Of note, the camp rules said Miss Peacock reserved the right to evict anyone who engaged in disorderly conduct, without a refund. The cancellation policy said, "no refunds" and "credit for future stay."
- e. On August 22, 2020, Mr. Fortin arrived and paid the \$525 balance.
- f. Mr. Fortin had to cut his stay short and the parties discussed that he intended to return, with the work crew, later that year. I infer that the local work project was delayed. Miss Peacock said she was okay with this, and just wanted 1 day's notice before Mr. Fortin returned.
- g. Mr. Fortin and his family left on August 30, 2020. Miss Peacock wrote Mr. Fortin a note stating that he had a 21-day credit, to be used in 2020.
- h. On September 4, 2020, Mr. Fortin told Miss Peacock that he and his work crew anticipated returning around September 15. He asked if she was able to "do better with the price," such as a monthly rate. Miss Peacock said she would have to wait and see.
- i. On September 13, 2020, Mr. Fortin told Miss Peacock that he was hoping to arrive September 16 or 17. Miss Peacock responded that she had to "adjust"

his credit to 7 days because she held his site for a month and was unable to rent it to others. She also said there was an extra charge for “extra persons” during his August stay, referring to Mr. Fortin’s children.

17. Mr. Fortin says on September 13, 2020 he called Miss Peacock and said if she was only willing to offer a 7-day credit, he would use the 7 days and then go elsewhere. He says she responded that if that was how he felt, she did not want him at her campground, and hung up. Miss Peacock does not dispute this.
18. I will not describe in detail the parties’ evidence about what happened after that point, as I find it is not relevant to this contractual dispute.

Was the 21-day camping credit agreement binding?

19. I find Miss Peacock offered Mr. Fortin a 30-night stay at her campground for \$1,050. I find Mr. Fortin accepted that offer when he paid the \$1,050. I find it was an implied term of the agreement that Mr. Fortin did not have to use all 30 nights consecutively. I say this because Miss Peacock knew Mr. Fortin’s return dates as part of the work crew were to be determined. This is also shown by the uncontested credit note, giving Mr. Fortin a credit for 21 days’ stay at the campground, to be used in 2020. It is further shown by Miss Peacock’s request for 1 or more day’s notice upon Mr. Fortin’s return.
20. I find that when Miss Peacock reduced the credit to 7 days, she breached the parties’ agreement. I find Mr. Fortin’s willingness to accept the 7-day credit was an attempt to mitigate his losses. In any event, Miss Peacock refused to allow Mr. Fortin to use the 7 days of credit if he was not staying longer.
21. Miss Peacock raises a number of reasons why her refusal to honour the credit was, in her opinion, justified. First, she says her campsite policy is that 2 persons, 1 vehicle and children aged 8 and under are included in the \$35 nightly rate, while additional persons are each \$10 extra. This policy does not appear in the evidence. Miss Peacock does not explain why, if this was the policy, she failed to initially apply it to Mr. Fortin, given that she knew Mr. Fortin’s 2 children were older than 8, based on his August 3, 2020 email. I find this policy did not exist when the parties formed their

contract, and even if it did Miss Peacock did not bring it to Mr. Fortin's attention and so it did not form part of the parties' contract.

22. Second, Miss Peacock says from the moment Mr. Fortin arrived, she was confronted with complaints from other campers. She says there were complaints about his dogs crying while locked in his trailer all day, generator noise, open flames with high winds during a fire ban, and other issues. Even if those things happened, which Mr. Fortin generally denies, Miss Peacock cannot have considered them to have voided her obligation to honour her credit policy, because they happened before she issued the credit.
23. Third, Miss Peacock says after Mr. Fortin's stay, he asked for a discount and threatened to tell "the rest of the crew" to go elsewhere. Emails confirm that Mr. Fortin told Miss Peacock that "some guys might go somewhere else," depending on the price, but it is clear that he was referring to crew members who had not yet booked. Mr. Fortin quickly accepted Miss Peacock's refusal to lower her price. I find the request for a price reduction did not alleviate Miss Peacock's obligation to honour the credit.
24. Fourth, Miss Peacock alleges that the majority of a work crew associated with Mr. Fortin cancelled their stay because of Mr. Fortin's influence, costing her over \$10,000. However, Miss Peacock provided no evidence in support of this claim, such as booking records or emails showing the confirmations and cancellations. It is unclear what happened after Miss Peacock refused to allow Mr. Fortin to return. There is no evidence that Mr. Fortin exerted any influence on the work crew.
25. Finally, Miss Peacock says Mr. Fortin became verbally abusive, hostile, confrontational, bullying, threatening and dictatorial. Because of this, she says she could not allow him to stay at the campground. In the parties' texts and emails in evidence, Mr. Fortin was none of those things. I find it unlikely that Mr. Fortin's conduct on the telephone was substantially different. I find there was no reason for Miss Peacock to fear allowing Mr. Fortin on the campground and no reason for her to refuse to honour the credit.

26. In summary, I find Miss Peacock breached her credit policy, which was incorporated into the parties' contract, and without justification failed to honour the 21-day credit note. I turn now to the appropriate remedy.

What remedy is appropriate?

27. Mr. Fortin agrees that the camp rules stated that no refunds would be given, only credit for a future stay. However, Miss Peacock failed to honour the credit note, and refused to let Mr. Fortin use any of the credit. In the circumstances, I find a full refund of the value of the 21-day credit is appropriate. This equals \$735.

28. The *Court Order Interest Act* applies to the CRT. Mr. Fortin is entitled to pre-judgment interest on the \$735 refund from September 12, 2020, the date of the contract breach, to the date of this decision. This equals \$2.33.

29. 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 find Mr. Fortin is entitled to reimbursement of \$125 in CRT fees. I dismiss Miss Peacock's claim for \$25 in CRT fees.

30. In submissions, Mr. Fortin claims \$3,000 in dispute-related expenses for his time spent on the dispute, stress and anguish, damage to his reputation, and money he may need to spend to have a "false police report removed from [his] good name."

31. CRT Rule 9.5(5) says that the CRT will only order compensation for time spent dealing with a dispute in extraordinary circumstances. I do not find there to be anything extraordinary in this dispute. Mr. Fortin's claim for his time is also unsupported by any documentation.

32. The other claims are not dispute-related expenses and Mr. Fortin did not seek to amend his dispute notice to add these claims, so I find they are not properly before me. Had they been the basis of distinct claims I would have dismissed them anyway, as they are entirely unsupported by objective evidence. I dismiss the \$3,000 dispute-related expense claim.

ORDERS

33. Within 14 days of the date of this order, I order Miss Peacock to pay Mr. Fortin a total of \$862.33, broken down as follows:
- a. \$735.00 as a refund under the contract,
 - b. \$2.33 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 in CRT fees.
34. Mr. Fortin is entitled to post-judgment interest, as applicable.
35. 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.

36. 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.

Micah Carmody, Tribunal Member