Civil Resolution Tribunal

Date Issued: July 12, 2021

File: SC-2021-000687

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. Lhekl dba Space Cowboys Mini Bullterriers*, 2021 BCCRT 757

B E T W E E N :

TAMMY BROWN

APPLICANT

A N D :

THOMAS LHEKL (Doing Business As SPACE COWBOYS MINI BULLTERRIERS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Roy Ho

INTRODUCTION

1. This dispute is about a refund for a miniature bull terrier (bull terrier) deposit. The applicant, Tammy Brown, paid the respondent bull terrier breeder, Thomas Lhekl

(doing business as Space Cowboys Mini Bullterriers), a $500 deposit to reserve a bull terrier.

2. Ms. Brown cancelled the purchase and claims a $500 refund of her paid deposit. Mr. Lhekl says the deposit is non-refundable.

3. The parties are self-represented.

4. For the reason to follow, I find that Ms. Brown is entitled to the return of her $500 deposit.

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.

ISSUE

9. The issue in this dispute is whether Ms. Brown's $500 deposit is non-refundable, or whether Mr. Lhekl must refund the $500 deposit.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Ms. Brown must prove her claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

11. I start with the relevant undisputed chronology.

12. On May 9, 2020, Ms. Brown emailed Mr. Lhekl about purchasing a bull terrier. Mr. Lhekl replied, and among other details about purchasing the dog, Mr. Lhekl said, "The deposit for the puppy is $500 and $2900 upon pickup" (reproduced as written). The email did not discuss anything further about the deposit.

13. On May 12, 2020, Mr. Lhekl emailed Ms. Brown an application form to complete. The evidence shows that Mr. Lhekl uses the application form to screen the suitability of potential bull terrier buyers. The application form does not mention the deposit and does not say anything about payments being non-refundable. On the same day, Ms. Brown sent her application and paid her $500 deposit to Mr. Lhekl for a bull terrier.

14. Ms. Brown paid her deposit by e-transfer. Through a series of messages, the parties discussed the deposit's payment method and the e-transfer password's proper spelling. There is no evidence that the parties discussed anything else about the deposit.

15. On July 3, 2020, Ms. Brown visited Mr. Lhekl place of business to see some bull terriers. Mr. Lhekl says that on this day, he went over his contract with Ms. Brown. I discuss this further below.

16. On October 29, 2020, Ms. Brown text messaged Mr. Lhekl to cancel her bull terrier reservation.

17. On November 1, 2020, Mr. Lhekl replied to Ms. Brown that the deposit was non-refundable. On the same day, and again on November 4, 2020, Ms. Brown wrote to Mr. Lhekl that she had not been informed that the deposit was non-refundable.

18. On November 5, 2020, Mr. Lhekl replied, “You have all the time in your life to ask if the deposit is refundable”.

19. Mr. Lhekl says his contract states that the deposit is non-refundable. However, Ms. Brown says she never received a contract and Mr. Lhekl did not submit one, apart from a blank contract that I find unhelpful in assessing what the parties agreed to.

20. As noted above, Mr. Lhekl says that when Ms. Brown visited on July 3, 2020, he went over his contract with her. In Ms. Brown’s Dispute Notice, she says that she first learned that the deposit was non-refundable on November 1, 2020. I infer from Mr. Lhekl’s submission that he suggests that Ms. Brown was made aware about the deposit’s refundability on this day. However, I find that I do not need to decide this point because nothing turns on it. If I accept Mr. Lhekl’s submission, then I would find that the first time Mr. Lhekl had communicated to Ms. Brown that the deposit was nonrefundable at the earliest on July 3, 2020. If I do not accept Mr. Lhekl’s submission, then I would find that the first time Mr. Lhekl had communicated to Ms. Brown about the non-refundable deposit at the latest on November 1, 2020. In either event, both days are after when Ms. Brown had already paid her deposit. So, I conclude that Mr. Lhekl did not communicate to Ms. Brown that the deposit was non-refundable before she paid it. I find this means that the parties had not agreed that the deposit was non-refundable at the time Ms. Brown paid it. My finding is further

supported by the fact that Mr. Lhekl admitted on November 5, 2020 that it was up to Ms. Brown to ask if the deposit was non-refundable.

21. For the above reasons, I find that there had been no 'meeting of minds' between the parties about whether the deposit was non-refundable. In making this finding, I rely on the reasonings in *Van Bergen v Renner,* 2019 BCCRT 120 and *Smythies v Sprung*, 2021 BCCRT 158. While these prior CRT decisions are not binding precedent, I find they are persuasive. In *Van Bergen* and *Smythies*, the tribunal members reasoned that even if there were sound business reasons to make deposits non-refundable, the parties must agree that a deposit is non-refundable when the contract is formed. A deposit cannot be made non-refundable unilaterally after the fact by one party's communication. So, without an agreement between the parties that the deposit was non-refundable at the time of payment, I find that the deposit is refundable, and Mr. Lhekl must refund Ms. Brown's $500 deposit.

22. The *Court Order Interest Act* applies to the CRT. Ms. Brown is entitled to pre-judgment interest on the $500 from October 29, 2020, the date of the cancellation, to the date of this decision. This equals $1.58.

23. 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. However, Ms. Brown requested to split the CRT fees between the parties regardless of the dispute's outcome. Ms. Brown paid $150 in CRT fees. So, given her request I find Mr. Lhekl must reimburse Ms. Brown $75 in CRT fees. Neither parties claimed dispute-related expenses, so I award none.

ORDERS

24. Within 30 days of the date of this order, I order Mr. Lhekl to pay Ms. Brown a total of $576.58, broken down as follows:

    a. $500 in debt as a refund for the deposit,

b. $1.58 in pre-judgment interest under the *Court Order Interest Act*, and

c. $75 in CRT fees.

25. Ms. Brown is entitled to post-judgment interest, as applicable.

26. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

27. 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.

Roy Ho, Tribunal Member