



# Civil Resolution Tribunal

Date Issued: July 20, 2021

File: SC-2021-002732

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mariano v. Walters (dba Garrett Walters Painting)*, 2021 BCCRT 794

**B E T W E E N :**

ELLEN MARIANO

**APPLICANT**

**A N D :**

GARRETT WALTERS (Doing Business As GARRETT WALTERS  
PAINTING)

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This is a dispute about a deposit. The applicant, Ellen Mariano, hired the respondent, Garrett Walters (doing business as Garrett Walters Painting), to paint the interior of her house. She paid a \$1,097.40 deposit. Ms. Mariano asked Mr. Walters to move the painting schedule back a week, but Mr. Walters could not

accommodate the new dates. Ms. Mariano requested her deposit back. Mr. Walters refused, stating that the original start date was firm and the deposit was non-refundable. Ms. Mariano claims the return of the \$1,097.40 deposit. Mr. Walters asks me to dismiss her claims.

2. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## **ISSUE**

7. The issue in this dispute is whether Ms. Mariano is entitled to the return of the \$1,097.40 deposit.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, Ms. Mariano as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Most of the facts are undisputed. The parties met at Ms. Mariano's home on February 20, 2021, so that Mr. Walters could see the scope of the job and prepare a quote. Later that day, Mr. Walters sent Ms. Mariano a written quote for \$3,990 for painting the walls and closets and \$1,424 for painting the trim and doors. The quote said that a 20% deposit was required. Ms. Mariano wanted all the quoted work done, so the deposit was \$1,097.40. The quote did not set out any other terms about the deposit, such as whether it was refundable.
10. On March 5, 2021, Ms. Mariano emailed Mr. Walters accepting his quote. She said that the painting needed to be done between July 9 and 14, 2021, based on their expected moving schedule. However, she said that "these dates are not 100% set". Mr. Walters did not respond to this comment. Ms. Mariano explains that her spouse's employer had not confirmed when they would have to move, so the exact date of their move was outside of their control.
11. Ms. Mariano paid the deposit the next day by phone. The parties disagree about what was said during this call. Ms. Mariano says that they did not discuss the proposed dates being firm or fixed. Mr. Walters says that he confirmed the dates so

they were no longer tentative. I discuss to this discrepancy below. It is undisputed that they did not discuss the deposit.

12. On March 23, 2021, Ms. Mariano emailed Mr. Walters that their dates had been shifted 1 week later. She said that he could start on either August 16 or 19. Based on the surrounding evidence, I find that the reference to August was a typo and she meant July 16 or 19. Mr. Walters said he was not available those dates as his summer was extremely busy. Ms. Mariano later suggested that he could start as early as July 14, but again Mr. Walters was not available.
13. With the parties unable to agree on dates, Ms. Mariano asked for her deposit back. Mr. Walters refused. He said that the deposit was non-refundable because it secured her booking in his schedule.
14. Ms. Mariano makes 3 arguments about why Mr. Walters should refund her deposit. First, she says that because the contract does not explicitly say that the deposit was non-refundable, it was refundable. Second, she says that even if the deposit was non-refundable, she should get a refund because it was Mr. Walters and not her who breached their agreement. Third, she says that she is entitled to cancel the contract under the *Business Practices and Consumer Protection Act* (BPCPA).
15. Mr. Walters says that the deposit's purpose was to secure specific dates in his busy schedule. In other words, he says that a refundable deposit would serve no purpose for his business. He also says that the dates he scheduled were firm and Ms. Mariano breached their agreement by demanding different dates. He does not respond to her argument about the BPCPA.
16. I find that I do not need to address the parties' arguments about whether the deposit was refundable under their contract or the BPCPA. This is because I agree with Ms. Mariano that even if the deposit was non-refundable, Mr. Walters breached the agreement and so is not entitled to keep the deposit. My reasons follow.
17. I agree with Mr. Walters that the purpose of a non-refundable deposit is to make sure that the purchaser follows through on the contract. If a purchaser, like Ms.

Mariano, has already partially paid for a product or service, they are less likely to try to back out. However, I find that even a non-refundable deposit must be returned if a seller, like Mr. Walters, breaches the contract. I find that it would make no sense if a seller could keep a deposit based on their own breach.

18. With that, I find that this dispute turns on whether the parties agreed that the original date range of July 9 and 14, 2021, was firm, as Mr. Walters alleges, or tentative, as Ms. Mariano alleges. The parties did not have a written contract. So, I find that their contract's terms are set out in the quote and in their email and phone communication.
19. The quote itself does not mention any proposed dates for the painting work to be done. The only written communication about dates is the parties' email exchange, which was before Ms. Mariano paid the deposit by phone. I find that Ms. Mariano was clear in these emails that she could not confirm dates. As noted above, Mr. Walters did not say anything in his emails that there was a problem with her not being able to confirm the dates at that point.
20. Mr. Walters says that they later confirmed the dates over the phone. Ms. Mariano says that Mr. Walters did not tell her that she could not change the dates. On this point, I prefer Ms. Mariano's evidence. I find it unlikely that Ms. Mariano would agree to firm dates over the phone the day after specifically telling Mr. Walters that the dates were not "100% set". I therefore find that Ms. Mariano did not agree that she would forfeit the deposit if she had to change dates.
21. I find that it was an implied term of the parties' contract that the dates were tentative, and that Ms. Mariano would need to confirm them once her spouse's employer had confirmed their moving date. I find that there is no other objectively reasonable way to interpret the parties' email correspondence. Ms. Mariano confirmed dates less than 3 weeks after paying the deposit, and several months before the work was to be done. Once she confirmed the dates, I find that the contract required Mr. Walters to either accept the change or return the deposit. By refusing to do either, I find that he breached the parties' contract.

22. I therefore find that Mr. Walters is not entitled to keep the deposit. I order him to pay Ms. Mariano \$1,097.40.
23. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Mariano is entitled to pre-judgment interest on the deposit from March 6, 2020, the date she paid it, to the date of this decision. This equals \$1.84.
24. 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 Ms. Mariano is entitled to reimbursement of \$125 in CRT fees. Ms. Mariano did not claim any dispute-related expenses.

## **ORDERS**

25. Within 30 days of the date of this order, I order Mr. Walters to pay Ms. Mariano a total of \$1,224.24, broken down as follows:
  - a. \$1,097.40 in debt,
  - b. \$1.84 in pre-judgment interest under the COIA, and
  - c. \$125 for CRT fees.
26. Ms. Mariano is entitled to post-judgment interest, as applicable.
27. 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 day that the state of emergency declared on March 18, 2020 ended, 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.

28. 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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Eric Regehr, Tribunal Member