



Civil Resolution Tribunal

Date Issued: March 8, 2022

File: SC-2021-004550

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cardinal v. Warren*, 2022 BCCRT 250

BETWEEN:

CRAIG CARDINAL and MARGARET STARKES

APPLICANTS

AND:

KEVAN WARREN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a deposit refund. The applicants, Craig Cardinal and Margaret Starkes, paid the respondent, Kevan Warren, a \$1,000 deposit for a trailer Mr. Warren was selling. The applicants then decided not to buy the trailer for personal reasons

and asked for a refund of their deposit. The applicants say Mr. Warren agreed to refund it but never did. The applicants claim a refund of the \$1,000 deposit.

2. Mr. Warren says since the applicants chose to cancel the purchase agreement, their deposit is non-refundable. He says he owes nothing.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. CRTA section 39 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
6. CRTA section 42 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.

7. 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

8. The issue in this dispute is whether the applicants are entitled to the return of their \$1,000 paid deposit.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions but refer only to what I find relevant to provide context for my decision.
10. According to a handwritten signed receipt in evidence, on April 24, 2021 the applicants paid Mr. Warren \$1,000 “as a deposit” on Mr. Warren’s 2008 Komfort Trailer. The receipt also stated, “balance due on pick-up of trailer”.
11. As shown in receipts in evidence, the undisputed evidence is that Mr. Warren spent over \$1,000 repairing the trailer. Completing the repairs was a term of the trailer’s sale to the applicants for an agreed \$16,500.
12. In the Dispute Notice that started this proceeding, the applicants said that after viewing Mr. Warren’s trailer online they drove to his property on April 24, 2021 with the expectation of purchasing it that same day. However, the applicants said because Mr. Warren was repairing the trailer’s brakes, it was not ready for hauling. The applicants said that they then “offered to put a deposit on the trailer until it was ready to go.” It is undisputed that on April 28, 2021 the applicants advised Mr. Warren that for personal reasons they would not buy the trailer.

13. In their reply submission, the applicants further described the situation as follows. They wrote that due to the repairs Mr. Warren was completing, they were “unexpectedly placed in the position of now having to put a deposit down on the trailer if we wished to purchase it.” They further stated the “deposit was simply to hold the trailer until it was roadworthy”.
14. So, the question is whether the applicants are entitled to a refund of their \$1,000 deposit.
15. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer who repudiates the contract generally forfeits the deposit. An example of repudiation is when a party refuses to purchase what they had agreed to buy, which is what happened here when the applicants refused to purchase Mr. Warren’s trailer as previously agreed. In contrast, a partial payment is made with the intention of completing a transaction. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received. See *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30.
16. I find the \$1,000 was a true deposit. I acknowledge the receipt referred to “balance due on pick up of trailer”, which could suggest the \$1,000 was a partial payment only. However, there is no evidence the sale of the trailer had in fact occurred. Further, on the applicants’ own evidence I find they offered the deposit so that Mr. Warren would “hold” the trailer for them, which I find was to motivate Mr. Warren to complete the sale. Since the applicants undisputedly repudiated the purchase agreement, I find they forfeited the \$1,000 deposit. It follows Mr. Warren’s actual loss is irrelevant.
17. I acknowledge the applicants’ undisputed evidence that during the April 28 telephone call Mr. Warren offered to “send a cheque” in the mail, but then did not do so. Mr. Warren says he said this “just to get him off the phone” and had not agreed to return the full deposit. Mr. Warren says he also only later realized the applicants had no legal right to the deposit’s return. In context, I find the phone conversation was not an enforceable agreement binding Mr. Warren to refund the deposit.

18. Given my conclusion above, I find the applicants' claim must be dismissed.
19. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for CRT fee reimbursement and for dispute-related expenses. As Mr. Warren was successful, I find he is entitled to reimbursement of the \$50 he paid in CRT fees.

ORDERS

20. I dismiss the applicants' claims. Within 30 days of this decision, I order the applicants to pay Mr. Warren \$50 as reimbursement for paid CRT fees. Mr. Warren is entitled to post-judgment interest, as applicable.
21. 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.
22. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. 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 BC.

Shelley Lopez, Vice Chair