



Civil Resolution Tribunal

Date Issued: April 20, 2022

File: SC-2022-000102

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Katovic v. Lamoureux*, 2022 BCCRT 450

Default decision – non-compliance

BETWEEN:

KEVIN KATOVIC

APPLICANT

AND:

STEPHANE LAMOUREUX

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the applicant's participation, due to the applicant's non-compliance with the CRT's mandatory directions as required, as discussed below.

2. This dispute is about compensation for a computer graphics card purchase. The respondent, Stephane Lamoureux, used the eBay website to buy a computer graphics card from the applicant, Kevin Katovic. The applicant says the respondent misused eBay's buyer protection services to obtain a refund. The applicant claims \$474.11 for the value of the graphics card they sold and provided to the respondent.
3. The respondent says the graphics card the applicant sent to them was defective. The respondent says the parties were unable to resolve the issue, so they used eBay's dispute resolution process, which the respondent says is binding. The respondent says eBay ruled that the applicant had to reimburse the respondent for the graphics card purchase. The respondent says they are willing to return the faulty graphics card to the applicant, if the applicant provides the required return label for shipping.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
 - a. Hear the dispute in accordance with any applicable rules.
 - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.

6. The case manager has referred the applicant's non-compliance with the CRT's rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
8. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. For the reasons that follow, I have dismissed the applicant's claim.

ISSUES

10. The first issue is whether the applicant is non-compliant with the CRTA and the CRT's rules.
11. If the applicant is non-compliant, the second issue is whether I should decide this dispute without the applicant's further participation, refuse to resolve it, or dismiss it.

EVIDENCE AND ANALYSIS

Non-compliance

12. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase as required by sections 25 and 32 of the CRTA, and CRT rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.

13. The applicant submitted their application for dispute resolution on January 5, 2022, which included their email address and phone number to be used for this dispute.
14. As noted above, the applicant seeks \$474.11 for the value of a computer graphics card he sold to the respondent. In their Dispute Response, the respondent said the graphics card was defective and they properly obtained a refund through eBay's dispute resolution process.
15. The case manager provided details of the applicant's non-compliance, as follows:
 - a. On March 29, 2022, the case manager emailed the applicant welcoming them to the facilitation stage of the CRT's dispute resolution process. The case manager asked the applicant to confirm their availability for an April 1, 2022 teleconference, by March 31, 2022. The applicant did not respond to the case manager's email.
 - b. On April 1, 2022, the case manager tried to call the applicant but was unable to leave a message. The case manager also emailed the applicant advising that their response to the March 29 email was overdue. The case manager warned the respondent that failing to respond may lead to a finding of being non-compliant and the dispute being decided without their participation. The case manager asked the applicant to contact them by 8:00 am on April 5, 2022, to confirm the applicant's availability for an April 6, 2022 teleconference.
 - c. On April 5, 2022, the case manager emailed the applicant with a final warning that if the applicant did not respond a tribunal member may decide the dispute without their participation under section 36 of the CRTA. The case manager asked the applicant to respond by 2:00 pm on April 6, 2022.
 - d. The applicant did not respond to the case manager's emails.
16. The case manager then referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicant's further participation.

17. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for their failure to respond to the case manager's requests for contact. As noted above, the applicant was warned twice, in writing, about the risks of their failure to comply with the case manager's directions. I turn then to whether I should continue to hear this dispute, or whether I should refuse to resolve or dismiss it.

Should the CRT hear the dispute without the applicant's further participation?

18. As noted above, the applicant initiated this CRT dispute. The applicant has provided no explanation about why they have failed to communicate with the CRT as required. Parties are told at the beginning of the facilitation process that they must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. I find the case manager made a reasonable number of contact attempts, through both the email address and phone number that the applicant provided. Given the multiple attempts, I find it is more likely than not that the applicant knew about the case manager's attempts and failed to respond.

19. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

20. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
 - b. The stage in the facilitation process at which the non-compliance occurs,
 - c. The nature and extent of the non-compliance,
 - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
21. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them, and knew the consequences if they failed to respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute. In the circumstances, I find it is appropriate to dismiss the applicant's dispute.
22. On the other hand, if I were to refuse to resolve the claim, there would be no finality to this dispute as it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
23. The applicant's non-compliance here also occurred early in the facilitation process, and the parties have not provided any evidence or submissions. The applicant effectively abandoned the process after receiving the respondent's Dispute Response.
24. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely

impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through silence, the applicant shows they do not want the CRT's assistance in resolving their claim.

25. Although not binding on me, I agree with and apply the former CRT Chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
26. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
27. In deciding to dismiss the claims rather than refuse to resolve them, I have put significant weight on the following factors:
 - a. The extent of the non-compliance is significant,
 - b. The non-compliance occurred early on in the CRT process,
 - c. The respondents are not prejudiced by such an order, and
 - d. The need to conserve the CRT's resources.
28. Therefore, I dismiss the applicant's claims and this dispute.
29. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find they are not entitled to a refund of paid CRT fees. The successful respondent did not pay any CRT fees or claim expenses.

ORDER

30. I dismiss the applicant's claims and this dispute.

Kristin Gardner, Tribunal Member