



Civil Resolution Tribunal

Date Issued: April 29, 2022

File: SC-2021-008763

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Herr v. 3 Sisters Transport Inc.*, 2022 BCCRT 503

BETWEEN:

HARPREET HERR and BUTA HERR

APPLICANTS

AND:

3 SISTERS TRANSPORT INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a refund for a paid deposit for moving services. The applicants, Mrs. Harpreet Herr and Mr. Buta Herr, say the respondent, 3 Sisters Transport Inc.

(Sisters), cancelled the applicants' move of their mobile home but has failed to refund \$2,247 from their paid deposit. The Herrs claim the \$2,247.

2. Sisters says it was Mr. Herr who cancelled the move and that it had already incurred expenses. Sisters says it owes no further refund.
3. Mrs. Herr represents the applicants. Sisters is represented by its owner, Jacqueline Maclsaac.

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). CRTA section 2 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 Herrs are entitled to a further refund for their paid deposit for moving services that were cancelled.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicants the Herrs must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. In a submitted Statement of Facts, the parties agree:
 - a. In around September 2021, the Herrs hired Sisters to move their mobile home.
 - b. The Herrs paid Sisters a \$4,232.23 deposit to “secure the booking”.
 - c. The Herrs’ home was scheduled to be moved on November 1, 2021.
 - d. On November 1, 2021, Sisters postponed the move due to its driver T’s unforeseen medical issue.
 - e. On November 22, 2021, Sisters partially refunded the Herrs \$1,985.23 and withheld the \$2,247 balance of the deposit.
11. In dispute is whether on November 2, 2021 Mr. Herr cancelled the move contract in a call to T. Sisters say he did and the Herrs say he did not.

12. The Herrs say that since Sisters never did the move, they should fully refund the Herrs' paid deposit. Sisters says it is entitled to the \$2,247 it retained from the paid deposit to cover its expenses incurred before the Herrs allegedly cancelled the move. More on that below.
13. I accept Sisters' evidence that when the Herrs made their booking they were told the move date was subject to change, as this was set out in Sisters' October 2021 text message to Mr. Herr.
14. The parties' versions of events around what happened on November 1 and 2 are inconsistent. As discussed below, the Herrs say T cancelled the move for November 1 and never re-scheduled it. Sisters says the move was postponed on November 1 to November 2 but Mr. Herr cancelled the move in a call to T at 11:45 a.m. on November 2, which the Herrs deny.
15. The Herrs say they tried to reach T but never were able to. Screenshots of Mr. Herr's cell phone records show a number of outgoing calls to T and Sisters on November 2 that went unanswered.
16. In contrast, Sisters says T phoned Mr. Herr on November 1 to postpone the move by one day. Sisters says that at 11:46 a.m. on November 2 Mr. Herr then called T and cancelled the move, at which time Sisters says T offered to postpone with no additional fees but Mr. Herr allegedly declined.
17. Sisters' own cellphone records show the 11:46 am incoming call to T's phone lasted only 1 minute. The Herrs say this was their leaving T a message but he never called back. I find it unlikely the Herrs completed a cancellation of the move in only a minute. Further, Sisters did not submit any witness statement from T about what he discussed with Mr. Herr on November 1 and 2, 2021. Parties are told to submit all relevant evidence. I draw an adverse inference against Sisters for failing to provide a statement from T.

18. On balance, I prefer Mr. Herr's version of events and find Mr. Herr never told T on November 2 that he was cancelling the move. Rather, I find that after T undisputedly cancelled the move for November 1, he never arranged with Mr. Herr to reschedule it for November 2 or any other date.
19. I acknowledge the Herrs' submitted phone records show an incoming call at 9:19 a.m. on November 2, which the Herrs say was from Sisters calling to ask Mr. Herr for money. At 9:32 a.m. on November 2, Sisters' representative emailed Mr. Herr and said a revised estimate was attached (but no attachment was submitted to the CRT) and that Mr. Herr would have \$2,884.04 left owing upon delivery. I find this evidence does not support a conclusion that on November 1 T had postponed the move to November 2 nor does it show Mr. Herr cancelled the move on November 2.
20. The Herrs also submitted an audio clip of Mr. Herr's November 16, 2021 call to T. In that call, T said, "I was on the road" and that he needed to be paid for his expenses. T became hostile and Mr. Herr was unable to interject. T told Mr. Herr he should call a lawyer, and then T hung up. From this recorded phone call, I cannot conclude that T told Mr. Herr on November 1 that he was postponing the move to November 2. Similarly, I cannot conclude from it that Mr. Herr cancelled the move on November 2.
21. In short, I have found the Herrs did not cancel the moving contract. With that, I find the Herrs are entitled to the claimed \$2,247 balance of their paid deposit.
22. However, even if I am wrong in the conclusion above, I would still find the Herrs are entitled to a full refund of their deposit. My reasons follow.
23. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer or customer 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. In contrast, a partial payment is made with the intention of completing a transaction.

24. Here, the deposit was undisputedly paid to “hold the date” as described in Sisters’ October 2021 text message. That suggests it was a true deposit where Sisters could retain the whole deposit if the Herrs cancelled the contract. However, Sisters’ own evidence is that it refunded the deposit less alleged expenses for T’s driving time, gas, and mileage fees. I find this supports a conclusion the deposit was not a true deposit. Further, even if I were to conclude Sisters was entitled to retain some or all of the deposit to compensate for T’s time, Sisters submitted no evidence to support those expenses, such as gas receipts or driving logs.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find the Herrs are entitled to pre-judgment interest under the COIA on the \$2,247. Calculated from November 2, 2021 to the date of this decision, this equals \$4.95.
26. 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. As the Herrs were successful, I allow their claim for reimbursement of \$175 in CRT fees. No dispute-related expenses were claimed.

ORDERS

27. Within 21 days of this decision, I order Sisters to pay the Herrs a total of \$2,426.95, broken down as follows:
 - a. \$2,247 in debt,
 - b. \$4.95 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
28. The Herrs are entitled to post-judgment interest, as applicable.
29. 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.

30. 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