



# Civil Resolution Tribunal

Date Issued: May 6, 2022

File: SC-2021-005513

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dhillon v. Hawryluk*, 2022 BCCRT 545

BETWEEN:

KELLY DHILLON

**APPLICANT**

AND:

SLAWKO HAWRYLUK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about a deposit paid for landscaping residential services. The applicant, Ms. Kelly Dhillon, hired the respondent, Mr. Slawko Hawryluk, for the work. Ms. Dhillon says he was largely absent and did almost no work. She claims for a \$2,000 refund of the deposit she paid to Mr. Hawryluk for him to start work.

2. Mr. Hawryluk denies liability. He acknowledges verbally agreeing to provide a refund and not finishing the work. However, he says Ms. Dhillon acted unreasonably and harassed him.
3. The parties are self-represented.
4. For the reasons that follow, I find Ms. Dhillon has proven her claims and make the orders set out below.

## **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. Some of the evidence in this dispute amounts to a "she 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

### ***Mr. Hawryluk's Late Evidence***

9. Mr. Hawryluk provided late submissions and a series of text messages as late evidence. Ms. Dhillon had the opportunity to view the late submissions and evidence and reply to it. I find the submission and evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to Ms. Dhillon in allowing the late evidence and submissions. So, I allow and have considered the late evidence and submissions, but my decision does not turn on them in any event.

### **ISSUE**

10. The issue in this dispute is whether Mr. Hawryluk agreed to provide a refund and if so, what remedy is appropriate.

### **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Dhillon as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed background. Ms. Dhillon hired Mr. Hawryluk to do landscaping work in the backyard of her home. The parties partially documented their agreement in their June 27, 2021 text messages. Ms. Dhillon agreed to pay Mr.

Hawryluk \$4,000 for the work. She also agreed to pay a \$2,000 deposit before the work began. Mr. Hawryluk agreed to do the work in 2 weeks. A screenshot shows she e-transferred \$2,000 to Mr. Hawryluk on June 27, 2020.

13. Mr. Hawryluk began work on June 28, 2020. He left after a few hours because of extremely hot weather, with Ms. Dhillon's permission. The parties dispute whether Mr. Hawryluk returned to work on June 29, 2020, though both parties agree that he did not work a full workday.
14. On June 30, 2020, Ms. Dhillon phoned Mr. Hawryluk and said she wanted him to stop work and return her deposit. Mr. Hawryluk did not return the deposit or complete the work.

***Did Mr. Hawryluk agree to provide Ms. Dhillon a refund?***

15. The parties provided conflicting accounts about the quality of Mr. Hawryluk's work and whether Ms. Dhillon justifiably asked him to stop work and provide a refund. I find it unnecessary to determine these issues. This is because Mr. Hawryluk says that on June 30, 2020, he agreed on the phone to return Ms. Dhillon's money "next week". I find this means he was obligated to return the \$2,000 refund by July 10, 2020, which was the end of the following week. I find the parties' verbal agreement was binding as there was a mutual exchange of promises. Mr. Hawryluk agreed to return the deposit and Ms. Dhillon released Mr. Hawryluk from any further obligations to do the landscaping work.
16. Mr. Hawryluk admits that he has not repaid the deposit. He says this is because Ms. Dhillon harassed him. I find it unnecessary to make any findings about this because in British Columbia there is no recognized tort of harassment. See *Total Credit Recovery v. Roach*, 2007 BCSC 530. Further, Mr. Hawryluk did not claim a specific set-off or file a counterclaim for damages for the alleged harassment. So, I find the allegations of harassment are not a reason to deny Ms. Dhillon's claims.

17. Given the above, I find Mr. Hawryluk breached the parties' verbal agreement by failing to return the deposit. I therefore order him to repay the \$2,000 deposit to Ms. Dhillon.
18. The *Court Order Interest Act* applies to the CRT. Ms. Dhillon is entitled to pre-judgment interest on the refund of \$2,000 from July 10, 2021, the date he had to return the money, to the date of this decision. This equals \$7.40.
19. 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. I find the Ms. Dhillon is entitled to reimbursement of \$125 in CRT fees.
20. Ms. Dhillon also claims \$100 for using a skip tracer and \$300 for a process server to locate and serve Mr. Hawryluk. She did not provide receipts, invoices, or other evidence to support these claims for reimbursement. So, I decline to award them as they are unproven.

## **ORDERS**

21. Within 14 days of the date of this order, I order Mr. Hawryluk to pay Ms. Dhillon a total of \$2,132.40, broken down as follows:
  - a. \$2,000 for the deposit refund,
  - b. \$7.40 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
22. Ms. Dhillon is entitled to post-judgment interest, as applicable.
23. 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.

24. 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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David Jiang, Tribunal Member