



Civil Resolution Tribunal

Date Issued: June 10, 2022

File: SC-2021-008248

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Flores v. Otremba (dba E'Laysa Guesthouse and Vineyard Retreat)*, 2022
BCCRT 684

B E T W E E N :

FRANCISCO FLORES

APPLICANT

A N D :

SILKE OTREMBA (Doing Business As E'LAYSA GUESTHOUSE AND
VINEYARD RETREAT)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a small claims dispute about the return of a deposit. The applicant, Francisco Flores, says he booked his wedding for July 2020 with the respondent, Silke Otremba (Doing Business As E'Laysa Guesthouse and Vineyard Retreat), but had to cancel

the wedding due to COVID-19 related travel restrictions. The E'Laysa Guesthouse and Vineyard Retreat (E'Laysa) is a boutique hotel located in Penticton, British Columbia.

2. Mr. Flores says that when he cancelled his booking, Ms. Otremba agreed to waive E'Laysa's cancellation policy and fully refund his deposit. He claims \$4,300 for the deposit's return. Ms. Otremba denies that she waived the cancellation policy and says Mr. Flores is not entitled to any refund.
3. Both 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. 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. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. 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 in the interests of justice.

6. 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.
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 to what extent, if any, Mr. Flores is entitled to the deposit's return.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, Mr. Flores must prove his claims on a balance of probabilities, meaning "more likely than not". I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note Ms. Otremba provided submissions but did not submit evidence despite having the opportunity to do so. However, in her Dispute Response and in her submissions, Ms. Otremba refers to a website link to E'Laysa's cancellation policy. I cannot rely on a live website link as what is contained today on that website is not necessarily what the parties have seen and relied on. So, I have not referred to or considered this website link in making my decision.
10. It is undisputed that on November 29, 2019, Mr. Flores made a reservation to have his wedding at E'Laysa. The booking was for July 24 to July 26, 2020. It is also undisputed that Mr. Flores paid a \$4,300 deposit for the booking and that part of this deposit was for booking rooms and the other part was the wedding event booking fee. On May 26, 2020, Mr. Flores cancelled his booking at E'Laysa and had a backyard wedding in Calgary in August 2020 instead.

11. As mentioned, Ms. Otremba says that E'Laysa's cancellation policy applies, so, Mr. Flores is not entitled to any refund. In her submissions, Ms. Otremba says that cancelled bookings incurred a 1-night charge per room if cancelled at least 14 days before arrival and a full charge if cancelled within 14 days of arrival. She says that events, such as weddings, cancelled within 3 months of the event date were charged the full amount.
12. Neither party submitted a written contract setting out the terms the parties agreed to when Mr. Flores made his reservation. Mr. Flores does not deny that a cancellation policy applied to his booking. Rather, as mentioned above, he says that Ms. Otremba waived the cancellation policy. An exact copy of this cancellation policy is not in evidence. However, the evidence does include Ms. Otremba's August 11, 2021 email to Mr. Flores where she copied and pasted E'Laysa's cancellation policy. Mr. Flores does not dispute that the cancellation policy set out in this email applied to his booking. So, I find that the cancellation policy applicable to Mr. Flores' booking provided that on cancellation, he would be charged 1-night's rate per room booked. In her Dispute Response, Ms. Otremba says that all room bookings require a 50% deposit. Mr. Flores does not dispute this. Since Mr. Flores' room bookings were for 2 nights, and under the booking policy Mr. Flores would have paid a 50% deposit for the rooms, I find that under the cancellation policy, Mr. Flores is not entitled to any refund for the room bookings.
13. Despite Ms. Otremba's submissions to the contrary, there is no evidence that the cancellation policy addressed the wedding booking fee. The cancellation policy that Ms. Otremba sent to Mr. Flores in her August 11, 2021 email did not set out what happens to an event booking fee on cancellation. Further, on March 9, 2021, Ms. Otremba told Mr. Flores that under E'Laysa's cancellation policy, Mr. Flores was entitled to the wedding booking fee's return. On September 21, 2021, Ms. Otremba also said that she owed Mr. Flores \$2,500 under the cancellation policy. Based on the evidence before me, I find that the parties' agreement at the time Mr. Flores made his reservation entitled him to a refund for the wedding booking fee on cancellation.

14. Mr. Flores does not say how much he paid for the wedding booking fee. In her Dispute Response, Ms. Otremba says that the wedding booking fee was \$2,500, less a \$500 discount. However, based on Ms. Otremba's September 21, 2021 email mentioned above, I find that \$2,500 from the \$4,300 deposit was for the wedding booking fee. So, I find Mr. Flores is entitled to a \$2,500 refund under the parties' original agreement.
15. I now consider whether there was a further agreement between the parties entitling Mr. Flores to more than the \$2,500 refund.
16. Mr. Flores' evidence includes emails he exchanged with Ms. Otremba between May 26, 2020 and September 22, 2021. Based on these emails, it is clear that leading up to May 26, 2020, the parties had discussions about cancelling Mr. Flores' reservation. Mr. Flores says that during these discussions, Ms. Otremba told him that she would refund him the full deposit. Ms. Otremba says that she never agreed to a full refund but instead told Mr. Flores that she was waiting on investment funds coming in from China and when those arrived, she would consider "doing something" for him.
17. Since the parties' discussions prior to May 26, 2020 are not in evidence, I must decide based on the evidence before me what, if anything, the parties agreed to. In a May 26, 2020 email, Mr. Flores referred to Ms. Otremba's "offer" and said that he and his fiancé had decided to cancel the wedding at E'Laysa and they would have a small wedding in Calgary instead. He said that he understood Ms. Otremba's situation and that he would patiently wait for his deposit at her earliest convenience. Though Mr. Flores referred to an offer, the offer's terms are not set out in this email.
18. On May 28, 2020, Ms. Otremba responded that she would go ahead and cancel all the rooms and told Mr. Flores to ignore any automated messages he may receive about the cancellation. She said that he would get his refund and asked him to be patient. Ms. Otremba said she expected to receive her funding in the next couple of weeks but that she could not guarantee the timing.

19. Between July 22, 2020 and December 20, 2020, Mr. Flores followed up with Ms. Otremba numerous times about the deposit's return. In her response emails during this time, Ms. Otremba told Mr. Flores repeatedly that she expected to have money to refund him soon but made no promises.
20. On March 9, 2021, Ms. Otremba told Mr. Flores that she had a cancellation policy in place and that she only offered a full refund if travelers were unable to travel by law due to COVID-19 related restrictions. She said that there were no travel bans from Alberta to BC in place at the time of Mr. Flores' booking and nothing prevented him from honoring the booking. Ms. Otremba then gave Mr. Flores two options. Under the first option, in accordance with E'Laysa's cancellation policy, Mr. Flores could receive his wedding booking fee back by the end of March. Under the second option, Ms. Otremba said she could continue to extend goodwill and Mr. Flores could wait until she had the full funds available. Mr. Flores responded the same day, saying he would accept the second option.
21. For a valid contract to exist the parties must have a "meeting of the minds". This means that the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms.
22. Based on the evidence before me, I find that the parties did not come to a meeting of the minds about how much Ms. Otremba would refund Mr. Flores. Although Mr. Flores told Ms. Otremba in his May 26, 2020 email that he accepted her offer, it is unclear what the terms of that offer were. The same applies to the parties' March 9, 2021 negotiations. Ms. Otremba's March 9, 2021 offer is vague since it does not specify what amount, if any, she is agreeing to pay Mr. Flores. When Ms. Otremba said that Mr. Flores could wait until she had the full funds available, it is unclear whether she was referring to the full amount of Mr. Flores' deposit or the full amount of the investment she was waiting to receive. As mentioned, the burden is on Mr. Flores, as the applicant, to prove his claim. Here, I find that he has failed to prove on a balance of probabilities that Ms. Otremba agreed to refund his deposit in full.

23. I find that the parties' original agreement applies and Ms. Otremba must refund Mr. Flores \$2,500 for the wedding booking fee. The *Court Order Interest Act* applies to the CRT. Mr. Flores is entitled to pre-judgment interest on the \$2,500 from May 26, 2020, the date he cancelled the booking, to the date of this decision. This equals \$26.62.
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 see no reason in this case not to follow that general rule. I find Mr. Flores is entitled to reimbursement of \$175 in CRT fees. Mr. Flores did not claim any dispute-related expenses.

ORDERS

25. Within 21 days of the date of this decision, I order Ms. Otremba to pay Mr. Flores a total of \$2,701.62, broken down as follows:
- a. \$2,500 in debt,
 - b. \$26.62 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
26. Mr. Flores 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.

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.

Nav Shukla, Tribunal Member