



Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2022-001308

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *King v. Elander*, 2022 BCCRT 880

BETWEEN:

ISAAC KING and TOBIAS VYSERI

APPLICANTS

AND:

SHAWN ELANDER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. The applicants, Isaac King and Tobias Vyseri, say they paid the respondent, Shawn Elander, a \$300 “down payment” for work the respondent agreed to do on the

applicants' house. The applicants say the respondent never did the work and refused to return the \$300. The applicants claim the \$300.

2. In the Dispute Response filed at the outset of this dispute, the respondent said only that they "don't know what this is about". The respondent later chose not to submit any evidence or make any written arguments, despite having the opportunity to do so.
3. Mr. King represents the applicants. The respondent is 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). 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 in this dispute call into question each other's credibility. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. 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 is whether the respondent owes the applicants the claimed \$300 they say they paid as a down-payment for work the respondent never completed.

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 reviewed the submitted evidence and the applicants’ arguments, but only refer to what is necessary to give context to my decision. As noted, after filing the Dispute Response, the respondent chose not to provide any evidence or written argument.
10. The applicants submitted a series of Facebook messages the applicant Tobias Vyseri had with the respondent. Tobias Vyseri listed the odd jobs they wanted done and the respondent agreed. On June 30, 2021 the respondent acknowledged the parties’ meeting and texted they wanted an “email transfer” to ensure their time was booked for the respondent. Tobias Vyseri agreed and sent \$300 by e-transfer that day. The respondent then texted a few times delaying their attending to do the work.
11. After a few texts in early August 2021 that the respondent did not answer, on August 11 Tobias Vyseri asked for a refund of the \$300, since it had been over a month. On August 21, the respondent texted that they would return the funds in 2 days. On September 20, 2021, the respondent texted “I will get you your money

back. If you can give me a couple days pls. Like I said I am very sorry” (quote reproduced as written).

12. The applicants submitted an October 7, 2021 audio recording where the respondent told Mr. King that “as soon as I get paid I will give her money back”. I infer “her” refers to Tobias Vyseri. In that call, the respondent agreed to return the funds “by the 15th”. There is no evidence the respondent paid anything.
13. I find the evidence overwhelmingly supports the applicants’ position they paid \$300 as a deposit to the respondent to do odd jobs around their home, work the respondent never started. Based on the texts, I find that \$300 was a “true deposit”, meaning it was paid to secure the respondent’s availability. A true deposit is not refundable if the applicants repudiated or cancelled the contract. Here, given the respondent’s delays and failure to communicate, I find the respondent was the one who repudiated the contract. In any event, the respondent clearly agreed to refund the \$300 and yet failed to do so. I find the respondent’s Dispute Response that they did not know what this dispute was about is not credible. Given all the above, I find the respondent owes the applicants the claimed \$300.
14. I note the applicants submitted evidence from other individuals who say the respondent also “scammed” them. I have placed no weight on this evidence. My conclusion rests solely on the evidence before me about the parties’ transaction.
15. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicants are entitled to pre-judgment interest on the \$300, under the COIA. Calculated from June 30, 2021 to the date of this decision, this interest equals \$1.84.
16. 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 applicants were successful, I find they are entitled to reimbursement of \$125 in paid CRT fees. The applicants are also entitled to reimbursement of \$12.44 in dispute-related expenses, for registered mail costs that I find reasonable.

ORDERS

17. Within 21 days of this decision, I order the respondent to pay the applicants a total of \$439.28, broken down as follows:
 - a. \$300 in debt,
 - b. \$1.84 in pre-judgment interest under the COIA, and
 - c. \$137.44, for \$125 in CRT fees and \$12.44 in dispute-related expenses.
18. The applicants are entitled to post-judgment interest, as applicable.
19. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of BC. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of BC.

Shelley Lopez, Acting Chair and Vice Chair