



# Civil Resolution Tribunal

Date Issued: September 9, 2022

File: SC-2022-000029

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Neufeld v. HTG Hot Tubs Galore Ltd.*, 2022 BCCRT 1000

B E T W E E N :

GARTH NEUFELD and ELIZABETH NAYLOR

**APPLICANTS**

A N D :

HTG HOT TUBS GALORE LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a hot tub deposit. The applicants, Garth Neufeld and Elizabeth Naylor, say the respondent, HTG Hot Tubs Galore Ltd. (HTG), refused to return their \$2,000 deposit after they cancelled their hot tub order. The applicants ask for reimbursement of \$2,000 for their paid deposit.

2. HTG says the applicants agreed to a \$2,000 non-refundable deposit when they ordered the hot tub. HTG says the applicants' claims should be dismissed.
3. Mr. Neufeld provided submissions on behalf of both applicants. HTG is represented by a director.

## **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. 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 in the interests of justice.
6. 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 whether HTG must refund the applicants' \$2,000 deposit.

## 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 read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

10. The parties agree the applicants paid HTG a \$2,000 deposit, and HTG refused to return the deposit after the applicants cancelled their hot tub order. The parties also agree that the applicants signed a contract that specified the deposit was non-refundable.

11. HTG provided a copy of the signed contract in evidence. Among other things, the contract included the following information:

- a. Ms. Naylor was listed as the buyer.
- b. The unit price was \$7,250, and the deposit paid was \$2,000. Beneath the amount paid and method of payment, the contract notes "\$2,000 is transferable but non-refundable".
- c. The "preferred possession date" was June 1, 2021. In the section that asked "urgent/deal-breaker deadline?" the word "no" was written in.
- d. At the bottom of the front page, the contract stated that by signing below, the buyer agreed to all terms and conditions of HTG's "guarantee/warranty/business policies". Ms. Naylor signed the contract.
- e. The business policies are listed on the contract's reverse side. One of the business policies is a "preparation time" policy that says, in part, "unless there is a deal-breaker deadline noted in writing on the contract, HTG does not offer

compensation or refunds to impatient buyers for unexpected delays, as it's the nature of the business".

12. The applicants say they are entitled to a refund because they cancelled the contract after the preferred June 1, 2021 delivery date and no hot tub was provided. Emails in evidence show the following chronology:
  - a. On May 21, 2021 HTG advised the applicants that the hot tub would be delayed because it needed a new "Hydroquip System" computer part that was backordered from the supplier due to COVID-19 related production delays.
  - b. On July 9, 2021, HTG advised the applicants that the supplier could not provide a timeline for the part to arrive due to COVID-19 related production delays, but HTG would reach out again to try to get a time frame. The applicants asked for a full refund the same day. They said the house that the hot tub was intended for was nearing completion and would be sold shortly, and they had waited as long as they could for the part to arrive.
  - c. HTG suggested other options to the applicants, and the applicants looked at and discussed other options with HTG in mid-July. The applicants did not confirm their preferred option at that time.
  - d. On July 17, 2021 HTG confirmed that the part for the applicants' original hot tub selection had arrived. HTG asked the applicants to confirm whether they would like their original hot tub or one of the other options discussed. HTG also confirmed it would not provide a full refund, as per the parties' contract.
  - e. The applicants did not respond until August 9, 2021 and again asked for a full refund. Further emails about the requested refund were exchanged without resolution.
  - f. On September 21, 2021, the applicants said they were officially cancelling the parties' contract.

13. As noted, the applicants say they were assured that the hot tub would be provided by June 1, 2021 when they entered into the contract, and they cancelled the contract when the hot tub was not delivered. I infer they argue that they are entitled to a refund because HTG failed to deliver the hot tub by June 1, 2021.
14. However, as noted, the applicants answered “no” to the “urgent/deal-breaker deadline?” question in the contract and agreed to HTG’s preparation time policy that said HTG would not offer compensation or refunds for unexpected delays without a deal-breaker deadline. I find the “preferred” June 1, 2021 possession date listed in the contract also makes it clear that June 1 was not a guaranteed delivery date. The evidence also shows that the part for the original hot tub selected by the applicants was available by July 17, 2021, about six weeks after the June 1, 2021 preferred possession date listed in the parties’ contract and just a few days after the applicants had looked at alternative hot tub options with HTG. So, while the hot tub was undisputedly unavailable on June 1, 2021, I find there was no contractual breach for the delay, and the applicants were not entitled to cancel the contract or claim a refund on that basis.
15. In an email to HTG, the applicants also referred to the *Business Practices and Consumer Protection Act* (BPCPA) and said that it required a full refund of their deposit. However, I find the parties’ contract substantially complies with the BPCPA provisions for future performance contracts and the applicants did not argue the BPCPA in their submissions, so I have not addressed the BPCPA further.
16. In short, the applicants undisputedly agreed to the non-refundable deposit, and they did not include a deal-breaker deadline in the contract. I find no legal basis to conclude the applicants are entitled to a refund contrary to the contract’s express terms. So, I find the applicants have not proved they are entitled to a refund of their \$2,000 deposit and I dismiss their claims.
17. 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.

As the applicants were unsuccessful, I dismiss their fee claim. HTG did not pay any CRT fees and none of the parties claimed dispute-related expenses, so I award none.

## **ORDER**

18. I dismiss the applicants' claims and this dispute.

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Leah Volkers, Tribunal Member