



# Civil Resolution Tribunal

Date Issued: October 14, 2022

File: SC-2022-001004

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fehr v. Defense Ballistics Ammunition Tactical LLC*, 2022 BCCRT 1125

BETWEEN:

JONATHAN FEHR

**APPLICANT**

AND:

DEFENSE BALLISTICS AMMUNITION TACTICAL LLC

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a customized rifle purchase. The applicant, Jonathan Fehr, says the respondent, Defense Ballistics Ammunition Tactical LLC (DBAT), failed to

deliver the purchased rifle despite having a reasonable opportunity to do so over more than 6 months. Mr. Fehr claims \$4,990 as a refund.

2. DBAT says when Mr. Fehr ordered the custom rifle it explained to him that it was having issues with suppliers due to COVID-19 related backlogs and that it could take up to 1 year. DBAT says Mr. Fehr accepted this and decided to buy the rifle. DBAT also says that at the time of purchase it explained to Mr. Fehr it does not give refunds or accept cancellations once the work has begun.
3. Mr. Fehr is self-represented. DBAT is represented by an employee or principal.

## **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. 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 Mr. Fehr is entitled to the claimed \$4,990 refund for the custom rifle that he bought but DBAT has not provided.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. Fehr must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read Mr. Fehr’s submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision. I note that apart from the Dispute Response it filed at the outset of this proceeding, DBAT chose not to provide any documentary evidence or make any written arguments, despite having the opportunity to do so.
10. The background facts are not disputed. There is no formal written contract in evidence. Mr. Fehr responded to DBAT’s online ad for custom rifle sales. There is nothing in the ad about timelines for producing the custom rifle. Mr. Fehr submitted a screenshot of a text exchange he had with DBAT’s sales representative. Mr. Fehr asked for an “ETA on the rifles themselves” and the representative responded “3-4 weeks” and added in response to Mr. Fehr’s concern about timing “we expect them to be ready within that time frame”.
11. In its September 11, 2021 invoice, DBAT charged Mr. Fehr \$5,034.40 for the custom rifle, noting the amount had been paid in full. However, Mr. Fehr claims only \$4,990 in this CRT dispute and so I find that is the most he can be awarded, exclusive of any interest, fees, and dispute-related expenses. I note there is nothing on the face of the invoice about a supply date for the rifle.

12. Mr. Fehr also submitted a series of emails he had with DBAT on November 7 and December 9, 2021. First, DBAT said it was waiting on the shipment of “barrels” and as soon those cleared customs and DBAT received them it would start assembling and shipping the rifles. Mr. Fehr responded that he was at that point interested in a refund. DBAT responded saying “we are not giving refunds” as it had too much invested in each rifle. Again, Mr. Fehr requested a refund, saying he was not prepared to wait an indefinite amount of time. DBAT responded it does “not do refunds” as a matter of company policy. Mr. Fehr responded that that policy is not listed anywhere and he was never told about it. On December 9, DBAT said it should be able to get the rifle produced “next week”. Significantly, there is no evidence it ever did so and that last text was December 9, 2021, over 10 months ago.
13. I find DBAT breached the parties’ contract because it did not supply the rifle within a reasonable period of time. On the evidence before me, DBAT still has not provided the rifle, over a year after Mr. Fehr paid for it. I find providing the rifle within a reasonable timeframe was an implicit term in the parties’ contract given the estimate given. I find that over a year is not reasonable. I do not accept DBAT’s assertion in its Dispute Response that it explained to Mr. Fehr at the outset that there could be a delay of up to a year. There is no evidence to support this and it is inconsistent with the 3-4 week estimate given. Further, a year has now passed and there is no evidence DBAT has provided the rifle.
14. Further, while DBAT said in its Dispute Response the custom rifle was non-refundable, there is no evidence Mr. Fehr was ever aware of or agreed to that term before he paid for the rifle. In any event, I have found DBAT breached the contract and so Mr. Fehr is entitled to the claimed refund. As noted, DBAT had the opportunity to provide documentary evidence and written arguments and chose not to do so.
15. Given my conclusion above, I do not need to address whether Mr. Fehr was entitled to cancel the contract and receive a refund under the *Business Practices and*

*Consumer Protection Act*. I find DBAT must pay Mr. Fehr the claimed \$4,990 refund.

16. The *Court Order Interest Act* applies to the CRT. However, Mr. Fehr expressly waives any claim to pre-judgment interest so I make no order for interest.
17. 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. Since Mr. Fehr was successful, I allow his claim for reimbursement of \$175 in paid CRT fees. Mr. Fehr does not claim dispute-related expenses.

## **ORDERS**

18. Within 21 days of this decision, I order DBAT to pay Mr. Fehr a total of \$5,165, broken down as \$4,990 in debt and \$175 in CRT fees.
19. Mr. Fehr is entitled to post-judgment interest as applicable.
20. 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. 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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Shelley Lopez, Vice Chair