



# Civil Resolution Tribunal

Date Issued: November 7, 2022

File: SC-2022-000603

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bourdeau v. Buller*, 2022 BCCRT 1223

BETWEEN:

JEAN GUY BOURDEAU

**APPLICANT**

AND:

TAMARA BULLER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about money paid towards a generator's purchase. The applicant, Jean Guy Bourdeau, paid a \$1,500 deposit to the respondent, Tamara Buller, for the

purchase of a Honda 11,000 watt generator. Mr. Bourdeau says the parties agreed to a \$3,000 purchase price, including delivery. Mr. Bourdeau says Ms. Buller never delivered the generator. Mr. Bourdeau also says Ms. Buller falsely advertised the generator, because Mr. Bourdeau says it is an industrial model and is unsuitable for powering computers and appliances.

2. In her Dispute Response filed at the outset of this proceeding, Ms. Buller said she gave Mr. Bourdeau 2 months to pick up the generator and the \$1,500 paid was a “holding deposit” as per the parties’ verbal agreement. Ms. Buller says Mr. Bourdeau never completed the sale and says she owes him nothing.
3. The parties are each 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. 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.
8. In his submissions, Mr. Bourdeau refers to a police file number and says it would take too long to obtain the police report through the *Freedom of Information Act*. Parties are told during the CRT process to submit all relevant evidence. I find it would be inappropriate and disproportionate for me to seek the police file at this late stage. Further, Mr. Bourdeau does not explain why the police file is relevant or how it impacts his entitlement to a refund of the paid deposit. I decline to seek the police file and make no findings about it. In any event, given my conclusion below nothing turns on the police file.
9. Next, I was initially unable to open Mr. Bourdeau's uploaded evidence. At my request, CRT staff asked him to re-submit it and he did so. Ms. Buller had an opportunity to comment on this evidence (a transcription of the parties' texts) but chose not to do so. I have considered this evidence in coming to my decision set out below.

## **ISSUE**

10. The issue in this dispute is whether Mr. Bourdeau is entitled to a refund of his \$1,500 deposit.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant Mr. Bourdeau must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant

to provide context for my decision. I note Ms. Buller did not submit any documentary evidence or written arguments, despite having the opportunity to do so.

12. Mr. Bourdeau says Ms. Buller asked for the “full \$3,000” purchase price in advance, because she needed to buy new tires for her vehicle in order to be able to deliver the generator. Mr. Bourdeau says that “in order to help”, he agreed to transfer \$1,500 immediately and pay the balance on receiving the generator. I find this is supported by the parties’ text messages, which I further discuss below.

13. Mr. Bourdeau submitted a screenshot of his January 7, 2022 e-transfer of \$1,500 to Ms. Buller. In it, he included a message:

By accepting this transfer you agree to deliver the 11,000 watt generator to [address] no later than today January 7, 2022 and also hereby certify and [guarantee] that the generator has no [known] issues and [runs] properly.

14. I accept Mr. Bourdeau paid Ms. Buller the \$1,500 deposit, which is undisputed.

15. Mr. Bourdeau submitted a transcription of text messages he said he had with Ms. Buller between January 7 and 9, 2022. He does not explain why he did not submit screenshots of the texts themselves. However, since Ms. Buller had the opportunity to dispute the transcription and did not do so, I accept the transcription is accurate.

16. In the text messages, on January 7, 2022 Ms. Buller asked Mr. Bourdeau for the \$1,500 purchase price balance and in exchange she offered to drop the total price to \$3,000 and that she would deliver the generator. Mr. Bourdeau responded that he would not agree, and that the agreement was that he would pay the final \$1,500 when Ms. Buller delivered the generator. On January 8, Ms. Buller responded, “you were right” and that due to weather she would see Mr. Bourdeau “tomorrow”. On January 9, Ms. Buller ultimately agreed to refund the paid \$1,500 but said she needed about a week to do so. However, despite further requests from Mr. Bourdeau for a refund Ms. Buller never provided it and ultimately stopped responding to him.

17. As noted above, in her Dispute Response Ms. Buller said the \$1,500 was a “holding deposit” and that the parties verbally agreed that Mr. Bourdeau had 2 months to pick up the generator and that he never did so. As also noted above, Ms. Buller chose not to provide any evidence or any written arguments for this CRT dispute. Given the texts I have accepted above as accurate, I do not accept Ms. Buller’s assertion that the agreement was for Mr. Bourdeau to pick up the generator. I find she agreed to deliver it.
18. Given Ms. Buller undisputedly never delivered the generator as agreed, I find Ms. Buller breached the parties’ agreement. I find Mr. Bourdeau is entitled to the return of his paid \$1,500 deposit. I also find she breached the parties’ agreement that she would refund the deposit within a week of Mr. Bourdeau’s request. Given this, I do not need to address the law around deposits and whether the \$1,500 paid was a “true deposit” or a partial payment. In other words, because Ms. Buller was the party who failed to complete the agreement’s terms, I find the deposit’s type irrelevant to Mr. Bourdeau’s entitlement to its return. I find Ms. Buller must refund Mr. Bourdeau the claimed \$1,500.
19. Given my conclusion above, I do not need to address Mr. Bourdeau’s argument that Ms. Buller falsely advertised the generator.
20. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Bourdeau is entitled to pre-judgment interest under the COIA on the \$1,500. Calculated from January 8, 2022 (a date I find reasonable) to the date of this decision, this interest equals \$12.30.
21. 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 Mr. Bourdeau was successful, I find he is entitled to reimbursement of \$125 in paid CRT fees. He did not claim dispute-related expenses.

## ORDERS

22. Within 21 days of this decision, I order Ms. Buller to pay Mr. Bourdeau a total of \$1,637.30, broken down as:
- a. \$1,500 in debt,
  - b. \$12.30 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.
23. Mr. Bourdeau is entitled to post-judgment interest, as applicable.
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. 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