



# Civil Resolution Tribunal

Date Issued: December 21, 2022

File: SC-2022-004698

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Holmes v. Murray*, 2022 BCCRT 1358

Default decision – non-compliance

BETWEEN:

LAURENE JEN HOLMES

**APPLICANT**

AND:

CLOE ELIZABETH LUCY MURRAY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant, Laurene Jen Holmes, due to her non-compliance with the CRT's mandatory directions as required, as discussed below.

2. The applicant says she sold concert tickets to the respondent, Cloe Elizabeth Lucy Murray. The applicant says the respondent never paid for the tickets. She claims \$750 for the tickets, plus \$200 “compensation”.
3. The respondent says her identity was stolen and she did not purchase anything from the applicant.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. Section 36 of the *Civil Resolution Tribunal Act (CRTA)* applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
  - a. Hear the dispute in accordance with any applicable rules,
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. A CRT case manager referred the applicant’s non-compliance with the CRT’s rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
7. These are the CRT’s formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.

8. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. For the following reasons, I dismiss the applicant's claim.

## **ISSUES**

10. The issues are:
  - a. Is the applicant non-compliant with the CRTA and the CRT's rules?
  - b. If so, should I dismiss or refuse to resolve this dispute without the applicant's further participation?

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

11. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1), 1.9 and 5.1 to 5.4. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
12. The applicant submitted her application for dispute resolution on July 13, 2022, which included her email address, mailing address, and telephone number to be used for this dispute.
13. The case manager provided details of the applicant's non-compliance, as follows:
  - a. In a November 17, 2022 email to both parties the case manager explained the CRT facilitation process. He reminded both parties they were expected to follow

- the directions and timelines the case manager set, to check their emails daily, and to respond to all email requests within 48 hours unless otherwise stated. The case manager asked the applicant to confirm her availability for a teleconference on November 21, 2022 between 9 am and 12 noon. He asked the parties to respond to the email by November 21, 2022.
- b. On November 21, 2022, the case manager telephoned the applicant and left a voicemail message requesting a response on or before November 22, 2022.
  - c. In a November 21, 2022 email at 11:43 am, the case manager asked the applicant to respond that day or provide a time and date for a telephone call that worked for her.
  - d. In a November 24, 2022 email the case manager set out his unsuccessful attempts to contact the applicant by email and telephone. He reminded the applicant that she was expected to comply with the case manager's instructions throughout the dispute resolution process. He referred to section 36 of the CRTA and warned the applicant that, if she did not respond, she could be found non-compliant. The case manager explained that meant a tribunal member may dismiss or refuse to resolve the applicant's claim, without the applicant's participation. The case manager told the applicant to email or call him by November 28, 2022.
  - e. Later on November 24, 2022, the case manager again telephoned the applicant. Again, there was no answer and the case manager left a message with the same final warning as the above email.
  - f. The applicant did not respond to the emails or voicemail messages.
14. The case manager referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicant's further participation.

15. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for failing to respond to the case manager's requests for contact. As noted above, applicant was warned, in writing, about the risks of her failure to respond to the case manager's communications.

***Should the CRT hear the dispute without the applicant's further participation?***

16. I find the case manager's attempted emails and telephone calls were sent to the email address and telephone number provided by the applicant on her application for dispute resolution. I find the case manager made a reasonable number of contact attempts, but the applicant failed to respond.

17. As noted above, the applicant initiated this CRT dispute. She has provided no explanation about why she failed to respond to the case manager's communications, as required. Given the multiple attempts at contact, I find the applicant likely knew about the case manager's attempts and failed to respond.

18. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

19. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:
- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
  - b. The stage in the facilitation process at which the non-compliance occurs,
  - c. The nature and extent of the non-compliance,
  - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
  - e. The effect of the non-compliance on the CRT's resources and mandate.
20. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact her. I further find the applicant knew the consequences if she failed to respond, which was the potential dismissal of her dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute.
21. If I were to refuse to resolve the claim, there would be no finality to this dispute. This is because it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period. I find that in refusing to resolve, there would be no finality and no consequence to the applicant for failing to participate, which would be unfair to the respondent.
22. The applicant's non-compliance here occurred early in the tribunal decision process, and the parties have not provided any evidence or submissions.
23. The CRT's resources are valuable. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where, through a failure to respond as required, the applicant shows she does not want the CRT's assistance in resolving her claim.

24. Although not binding on me, I agree with and apply the former CRT Chair's reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
25. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
26. Given the applicant's non-compliance, I find she is not entitled to a refund of any CRT fees she may have paid. The successful respondent did not pay any CRT fees or claim any dispute-related expenses.

## **ORDER**

27. I dismiss the applicant's claims and this dispute.

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Andrea Ritchie, Vice Chair