



# Civil Resolution Tribunal

Date Issued: March 22, 2023

File: SC-2022-004445

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kengni v. Yaletown Interiors (Richmond) Ltd.*, 2023 BCCRT 241

B E T W E E N :

RICHARD KENGNI and PIERRETTE DJANWOUA

**APPLICANTS**

A N D :

YALETOWN INTERIORS (RICHMOND) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a furniture sale.
2. The applicants, Richard Kengni and Pierrette Djanwoua, ordered furniture from the respondent, Yaletown Interiors (Richmond) Ltd., in April 2022. The applicants paid a \$2,000 initial deposit and then made a further \$3,084 partial payment for the furniture.

The applicants say a short time later they changed their minds and asked the respondent to cancel their furniture order and refund their deposit. The respondent undisputedly refused. The applicants say they are entitled to a refund under the *Business Practices and Consumer Protection Act* (BPCPA). The applicants ask for an order that the respondent refund them \$5,000. The applicants waive their claim to any amount in excess of Civil Resolution Tribunal's (CRT) small claims \$5,000 monetary limit.

3. The respondent says its contract clearly states that all sales are final and says the applicants are not entitled to any refund.
4. The applicants are self-represented. The respondent is represented by an employee or principal.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. 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.
6. 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.
7. Section 42 of the 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.

8. 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**

9. The issue in this dispute is whether the applicants are entitled to a \$5,000 refund.

## **EVIDENCE AND ANALYSIS**

10. 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.
11. I begin with the agreed facts. On April 3, 2022, the applicants ordered furniture totaling \$10,168 from the respondent's store and paid the respondent \$2,000. One of the applicants, Mr. Kengni, signed the furniture order invoice. The applicants paid the respondent a further \$3,084 on around April 5, 2022. The respondent needed to order the furniture from the manufacturer and provided the applicants an estimated date of 3 to 4 months to receive the furniture. The applicants attended the respondent's store on April 12, 2022, and asked to cancel their furniture order. It is undisputed that the respondent refused to cancel the furniture order or provide a refund.
12. Based on the parties' evidence and submissions, I find the applicants did not receive any furniture from the respondent after they asked to cancel the furniture order.
13. The signed furniture order invoice says that all sales are final. Despite this, the applicants say they are entitled to a refund because the parties' contract is a future performance contract that does not comply with BPCPA sections 19 and 23.

14. I find the respondent is a supplier and the applicants are consumers under the BPCPA, and that they were involved in a consumer transaction.
15. BPCPA section 17 defines a future performance contract as a contract between a supplier and a consumer for the supply of goods or services for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. Section 17 lists certain exclusions but these do not apply to the circumstances here.
16. I find the signed April 3, 2022, furniture order invoice is the parties' contract. As the furniture was undisputedly to be supplied after the contract was made, I find that the parties entered into a future performance contract. Given that it was signed by Mr. Kengni on April 3, 2022, I infer the respondent likely provided the applicants with the contract the same day. The applicants do not argue that the respondent failed to provide them with a copy of the contract within 15 days, as required under BPCPA section 23(3).
17. The question then is whether the applicants could cancel the contract under the BPCPA. Sections 19 and 23(2) require future performance contracts to contain certain information. Section 23(5) says that a consumer may cancel a future performance contract by giving notice of cancellation to the supplier not later than 1 year after the date the consumer receives a copy of the contract, if the contract does not contain the information required in sections 19 and 23(2).
18. While the contract contains some of the information required under BPCPA section 19, including the total price under the contract, it does not include details of other costs payable by the consumer including taxes as required by section 19(g). The contract also does not include the supply date, or the date on which the supply of the goods will be complete, as required by BPCPA section 23(2). The respondent argues that it provided a "package price that includes GST", and says is not customary to provide supply dates in its contracts. It also says the applicants were verbally informed of an estimated timeline when they purchased the furniture. However, the BPCPA provisions are mandatory, so despite these submissions, I find that the

contract does not comply with some of the mandatory BPCPA provisions in sections 19 and 23(2).

19. The parties agree that Mr. Kengni attended at the respondent's store on April 12, 2022, and asked to cancel the contract. I find this cancellation request was in time under BPCPA section 23(5).
20. BPCPA section 27 says that if a consumer cancels a contract, the supplier must refund to the consumer all money received, without deduction, within 15 days after the notice of cancellation has been given. Section 55 says the consumer may recover the refund from the supplier as a debt due. The applicants paid the respondent a total of \$5,084. Given this, I find that the respondent must refund the applicants the claimed \$5,000, which I note is the CRT's small claims monetary limit.

### ***Interest, CRT fees and dispute-related expenses***

21. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$5,000 award from April 27, 2022, 15 days after the date they cancelled the contract, to the date of this decision, which I find reasonable in the circumstances. This equals \$96.23. I note that pre-judgment interest, CRT fees, and dispute-related expenses are exclusive of the CRT's \$5,000 small claims monetary limit.
22. 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. As the applicants were successful in this dispute, I find they are entitled to reimbursement of \$175 in paid CRT fees. None of the parties claimed dispute-related expenses.

## **ORDERS**

23. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$5,271.23, broken down as follows:

- a. \$5,000 in debt,
- b. \$96.23 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

24. The applicants are entitled to post-judgment interest, as applicable.

25. 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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Leah Volkers, Tribunal Member