



# Civil Resolution Tribunal

Date Issued: November 20, 2023

File: SC-2022-009604

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Peters v. Home Depot of Canada Inc.*, 2023 BCCRT 992

BETWEEN:

DAVID PETERS

**APPLICANT**

AND:

HOME DEPOT OF CANADA INC.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about a gift card. The applicant, David Peters, tried to purchase a tool chest online from the respondent, Home Depot of Canada Inc. (Home Depot), using a \$500 gift card. When Home Depot was unable to fulfill the online order, it agreed to refund him. Mr. Peters says he then attended a brick-and-mortar Home Depot to

make purchases but found the gift card had not been credited. Mr. Peters left the store without making any purchases.

2. Mr. Peters claims a variety of damages. First, he claims \$500 for the value of his original gift card. Second, he claims \$30 further to an offered credit from Home Depot. Third, he claims \$24.20 in travel expenses to and from Home Depot. Fourth, he claims \$2,000 in damages for mental distress. Finally, he claims \$2,300 in damages for being unable to fulfill a business contract as he says Home Depot prevented him from acquiring the necessary items. In total, Mr. Peters claims \$4,854.20.
3. Home Depot agrees Mr. Peters is entitled to his original \$500 gift card and the offered \$30 but says it has already provided both. Home Depot takes no position with respect to Mr. Peters claim for travel expenses. Home Depot asks me to dismiss Mr. Peters' other claims for damages.
4. Mr. Peters is self-represented. Home Depot is represented by an employee.
5. For the reasons that follow, I dismiss Mr. Peters' claims.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. 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.
10. In his submissions, Mr. Peters alleges that Home Depot committed theft and fraud under the *Criminal Code*. While I find no evidence of theft or fraud given my conclusion below, I find assessing a breach of the *Criminal Code* is outside my jurisdiction in this CRT proceeding, which is a civil dispute about a consumer transaction. I will make no further comment or findings about the *Criminal Code*.
11. Mr. Peters also alleges that Home Depot breached provisions of the *Personal Information Protection and Electronic Documents Act* (PIPEDA). However, Mr. Peters does not claim any relief in respect of Home Depot's alleged breach of PIPEDA, so I find I do not need to consider it further.
12. Mr. Peter also alleges that Home Depot committed or engaged in a deceptive act under the *Business Practices and Consumer Protection Act* (BPCPA). Section 171 of the BPCPA states that the Provincial Court has jurisdiction over proceedings to recover damage or loss for failure to comply with the BPCPA. The CRT does not have jurisdiction to award remedies for a breach of the BPCPA. While the CRT can consider the BPCPA in respect of a claim for breach of contract, I find that does not apply in these circumstances, and I do not need to consider the BPCPA further.

## **ISSUE**

13. The issue in this dispute is whether Mr. Peters is entitled to damages from Home Depot.

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, Mr. Peters must prove his claims on a balance of probabilities. This means “more likely than not”. I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
15. On November 25, 2022, Mr. Peters purchased a tool chest from Home Depot through their website. He paid the \$311.36 cost using a \$500 gift card. The next day, he received a series of phone calls from Home Depot employees to say it could not fulfil Mr. Peters’ order. The representatives suggested that Mr. Peters go a bricks-and-mortar Home Depot location to complete his purchase, if he wished to continue.
16. During those phone calls, Home Depot undisputedly offered Mr. Peters a \$30 credit for his difficulties with the online order. Home Depot says it cancelled the online order and refunded Mr. Peters \$311.36 for the cost of the tool chest.
17. The same day, Mr. Peters then went to a Home Depot location. He says he had a shopping cart “full of items,” due to the Black Friday sale, though he does not say what items they were. Mr. Peters says the items’ total check-out cost was approximately \$450. When he attempted to check out, he found his gift card only had a balance of \$188.64. This is the amount that would remain if Mr. Peters had not received the refund of \$311.36.
18. The Home Depot employees on location attempted to determine why Mr. Peters’ gift card did not have the full \$500 balance but were unable to do so. Mr. Peters chose not to complete the purchase by other means. Home Depot employees agreed to set aside his purchases and contact him on November 28, 2022 to resolve matters.

19. When Mr. Peters did not hear from Home Depot by mid-afternoon on November 28, he attended the Home Depot location again. A store manager told Mr. Peters they did not have an answer to the gift card issue yet. Mr. Peters says he decided to purchase the items the employees had set aside on November 26, but learned they had been put back on the shelves. Mr. Peters left the store without completing any purchases.

### ***Gift Card Refund and Offered Settlement***

20. As noted above, Home Depot agrees that Mr. Peters is entitled to the full balance of his \$500 gift card and the further offered \$30 credit. Home Depot says it has already paid these amounts.

21. First, I address the refund. There is no dispute Home Depot did not refund Mr. Peters' original gift card. Instead, Home Depot sent a second gift card to Mr. Peters, via email, through a third party company. Mr. Peters says did not see any emails about the new gift card and suggests it may have been diverted to his email spam folder and subsequently deleted.

22. Home Depot provided evidence of an electronic gift card emailed to Mr. Peters in the amount of \$311.36 on November 27, 2022. Home Depot provided the identifying information for the new gift card, including the gift card number. Home Depot also confirmed that the original gift card had the remaining balance of \$188.64.

23. I find together, these show Mr. Peters has \$500 in gift cards to Home Depot. I find that Home Depot refunded Mr. Peters through a second electronic gift card. Mr. Peters does not say that he is unable to use the new or original gift cards to make purchases. While he may not still have the initial email, I find he now has the gift card information. So, I find that gift card remains available to Mr. Peters to use, along with his remaining balance on the original gift card. I find Home Depot has already refunded Mr. Peters, and he is not entitled to a further \$500 payment. I dismiss this aspect of his claim.

24. Home Depot also says it provided a credit of \$33.60 to Mr. Peters' Mastercard. It provides an order summary showing a payment on November 26, 2022 for \$33.60 to a customer called "Ron Peters Associates." Home Depot explains this is the offered \$30 credit, as well as \$3.60 in tax.
25. In submissions, Mr. Peters says Ron Peters & Associates is his father's company, and so he cannot confirm Home Depot provided the credit. However, in a March 4, 2023 email to Home Depot, Mr. Peters writes that he has spent hundreds of thousands of dollars at Home Depot "through my accounts including Ron Peters & Associates company." Mr. Peters also admits he is a contact on the account for Ron Peters Associates. I find this shows Mr. Peters has already received more than the offered \$30 credit in an account he claims is his and for which he is a contact. So, I find he is not entitled to a further \$30 payment, and I dismiss this aspect of his claim.

### ***Travel***

26. Mr. Peters claims \$24.20 in travel to and from Home Depot on two separate trips. He does so on the basis of 44 kilometers of total travel at \$0.55 per kilometer.
27. However, I find Mr. Peters' attendance at Home Depot on each occasion was by choice. On each visit, he considered purchasing items, but chose not to do so.
28. While he also drove to Home Depot to discuss his gift card issues, I find this does not obligate Home Depot to pay for his mileage. I dismiss this aspect of his claim.

### ***Mental Distress***

29. As noted above, Mr. Peters claims \$2,000 in damages for mental distress arising from his interactions with Home Depot. He says he was embarrassed by needing to tell his story repeatedly to Home Depot employees and by having other customers witness his interactions with Home Depot about the gift card. He argues his experiences have shattered his trust in gift cards and that it may impact his overall perception of consumer trust and reliability of businesses.

30. I agree with the reasoning in the non-binding but persuasive CRT decision *Eggbury v. Horn et al*, 2018 BCCRT 224, which says that for a claim for mental distress to be successful, there must be medical evidence supporting the stress of mental distress.
31. While Mr. Peters provided evidence that he attended counselling services, other than his unsupported statement, he did not provide any evidence that it was to address mental distress arising from his interactions with Home Depot. Likewise, there is no medical evidence establishing that Mr. Peters has suffered any mental consequences from the events described above.
32. Mr. Peters also argues he is entitled to damages under *Fidler v. Sun Life Assurance of Canada*, 2006 SCC 30. This case addresses “peace of mind contracts,” such as vacations, wedding services, and luxury chattels. When such contracts are breached, a party may have a claim for damages for disappointment or inconvenience. So, I find Mr. Peters is advancing an alternate claim for inconvenience or disappointment.
33. However, Mr. Peters does not outline the basis of any “peace of mind” contract with Home Depot. So, he has no basis for a claim that such a contract was breached. I dismiss this aspect of Mr. Peters’ claim.

### ***Lost Contract***

34. Mr. Peters final claim is for \$2,300 for a sump pump repair contract he says he was unable to perform without materials from Home Depot. He also frames this claim as one of lost wages, citing the amount of time he has spent on the CRT proceeding, apparently preventing him from pursuing other work.
35. Mr. Peters provided a letter from a potential client, EK. On November 25, 2022, EK had contacted Mr. Peters about sump pump repairs. In the letter, EK explained that he was canceling his contract with Mr. Peters for sump pump repairs, given that the work was not completed in a timely manner. EK noted Mr. Peters’ explanation that he had trouble obtaining supplies and that Mr. Peters had “ongoing issues with Home Depot.”

36. However, I find that Mr. Peters has not established that he was unable to perform the work due to the gift card issue with Home Depot. Mr. Peters does not explain what materials he was unable to purchase, or why he was unable to use a payment method other than the gift card. I find it was his choice not to complete his purchases with Home Depot, and that he cannot now hold them responsible for the subsequent loss of the sump pump contract. I dismiss this aspect of his claim.
37. To the extent that Mr. Peters argues that he has lost the opportunity to work because of his time spent on this CRT dispute, he has provided no evidence to support this claim. Even if he had, however, I would not allow his claim, as time spent on litigation is generally not recoverable as damages, though it may be recoverable as costs in a legal proceeding. See: *Rossmore Enterprises Ltd. v. Ingram*, 2013 BCSC 894.
38. While the CRT does not award costs, time spent may be considered a dispute-related expense. However, given that I dismiss Mr. Peters' claims, he is not entitled to dispute-related expenses in any event.
39. 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, and I dismiss Mr. Peters' claim for CRT fees. Home Depot did not pay any CRT fees or claim any dispute-related expenses.

## **ORDER**

40. I dismiss Mr. Peters' claims and this dispute.

---

Christopher C. Rivers, Tribunal Member