



Civil Resolution Tribunal

Date Issued: January 22, 2024

File: SC-2023-001383

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kelly v. Nagy*, 2024 BCCRT 70

BETWEEN:

CARA-LEE KELLY

APPLICANT

AND:

ZOLTAN NAGY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about the failed sale of a used car. The applicant, Cara-Lee Kelly, paid the respondent, Zoltan Nagy¹, a \$900 deposit for a vehicle the respondent was

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. The

selling. The applicant ultimately decided not to complete the purchase and asked for her \$900 deposit back, which the respondent refused. The applicant claims the \$900 deposit's return in this dispute.

2. The respondent says the deposit was non-refundable and because the applicant chose not to buy the vehicle, they do not need to return the money.
3. Both parties are 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). 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.
5. 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 and that an oral hearing is not necessary.
6. 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.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to the \$900 deposit's return.

respondent, Zoltan Nagy, did not provide their pronouns or title. Because of this, I will use gender neutral pronouns to refer to the respondent throughout this decision, intending no disrespect.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. I note the respondent did not provide any documentary evidence, despite having the opportunity to do so.
9. In a handwritten December 30, 2022 agreement, the parties agreed the respondent would sell the applicant a 2002 BMW X5. The agreement noted the respondent had received a \$900 deposit and the remaining \$3,100 was due by January 15, 2023. The signed agreement is silent on whether the deposit was refundable.
10. It is undisputed that the applicant was waiting on funds from the Insurance Corporation of British Columbia (ICBC) to complete the sale. On January 17, by text message, the applicant asked the respondent if they could "redo the contract" and the respondent replied that they would "hold a bit longer" and that hopefully the applicant would get the money soon. Then, on Sunday, January 22, the applicant asked if the respondent was able to meet up with the car on "Tuesday". The respondent asked if the applicant had the rest of the money, and the applicant replied "on Tuesday".
11. Text messages in evidence show the parties attempted to meet on Wednesday, January 25, presumably to finalize the sale, but the applicant said she was stuck in traffic and needed to reschedule. Later the same day, the applicant told the respondent that ICBC was "stalling", and she did not want to keep the respondent waiting. So, the applicant asked when the respondent could return her deposit. The respondent replied that the applicant had said she had the money "yesterday". The respondent said that the deposit was not refundable and that they had lost buyers while waiting for the applicant to complete the sale. The applicant demanded the deposit's return, but the respondent refused.
12. The respondent says that they ultimately sold the car to another buyer for \$3,000.

13. With these background facts in mind, I turn now to the applicable law. In law, a true deposit is designed to motivate contracting parties to carry out their bargains. A buyer who repudiates the contract generally forfeits the deposit. An example of repudiation is when a party refuses to purchase what was bargained for. In contrast, a partial payment is made with the intention of completing a transaction, such as with a down payment to cover work to be done or materials to be purchased under the contract. For a seller to keep a partial payment, the seller must prove actual loss to justify keeping the money received (see *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30).
14. I find the applicant's \$900 payment was a true deposit. This is because I find the deposit was intended for the respondent to hold the vehicle for the applicant while she waited to receive funds from ICBC for the remaining \$3,100 payment.
15. The applicant says that the respondent rushed her to pay the deposit without giving her an opportunity to test drive the vehicle. The applicant suggests this is why she backed out of the sale. The respondent denies this and says the applicant chose not to drive the car and instead asked them to drive her to the bank to withdraw the deposit funds. I find the text messages in evidence do not support the applicant's version of events. In her text messages, the only reason the applicant gave for not completing the sale was that she had not received the necessary funds from ICBC.
16. So, I find that the applicant repudiated the parties' contract when she refused to complete the purchase. Because the \$900 was a true deposit, I find the applicant forfeited it when she repudiated the contract. As a result, I find the applicant is not entitled to the deposit's return and I dismiss her claim.
17. 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 applicant was unsuccessful, I dismiss her reimbursement claim for her paid CRT fees. The respondent did not pay any CRT fees and neither party claims any dispute-related expenses, so I award no reimbursement.

ORDER

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

Nav Shukla, Tribunal Member