



Civil Resolution Tribunal

Date Issued: February 29, 2024

File: SC-2023-006660

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Timeless Windows Corp. v. Barlow*, 2024 BCCRT 202

BETWEEN:

TIMELESS WINDOWS CORP.

APPLICANT

AND:

CAROLINE BARLOW

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a window replacement contract.
2. The respondent, Caroline Barlow, entered a contract with the applicant, Timeless Windows Corp., for a new living room window and a patio door. A little over a month

later, the respondent cancelled the contract. The applicant accepted the cancellation and charged the respondent a late cancellation fee as set out in the parties' contract. The applicant claims \$3,015.14, which it says is the fee's outstanding balance.

3. The respondent says the applicant pressured them into signing the contract. They also say they did not receive a physical copy until months after they signed it, though they acknowledge receiving an email copy. The respondent says they should not have to pay the fee and ask me to dismiss the claim.
4. The applicant is represented by an employee. The respondent is self-represented.
5. For the reasons that follow, I allow the applicant's claim.

JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.
7. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.
8. 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 court.

9. Where permitted by CRTA section 118, 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. While they provided a Dispute Response setting out their basic position, the respondent did not provide any documentary evidence or additional written submissions. CRT staff reached out the respondent by both email and telephone, and spoken with the respondent by phone. The respondent advised CRT staff they had difficulty with computers but was going to have their children assist them. The respondent received a number of extensions to their deadlines, but never filed any response. I find the respondent had a reasonable opportunity to respond, so I have decided the dispute on its merits.

ISSUE

11. The issue in this dispute is whether the respondent must pay the applicant a late cancellation fee set out in the parties' contract.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove its 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.
13. On February 14, 2023, the parties undisputedly entered into a written contract for the applicant to replace the respondent's living room window and kitchen patio door. The applicant, which does business under the name Renewal by Andersen, set the total cost at \$14,900.55, inclusive of tax.
14. The respondent signed the contract. The contract shows that the applicant received a deposit of \$710 and owed a balance of \$14,190.55.

15. On the agreement's first page, in bold print, are terms about cancelling the contract. They allow the buyer to cancel on or before February 17, 2023, or the third business day after the date of the transaction, whichever is later. The terms also refer the buyer to an attached "Notice of Cancellation" form for further details.
16. The Notice of Cancellation form includes a line of isolated, large type that says the buyer may cancel the transaction at any time on or before February 17, 2023.
17. Undisputedly, the respondent did not attempt to cancel the contract until March 20, 2023, well after the period allowed by the contract.
18. Another contract term sets out what happens in the event of a late cancellation. It allows the applicant to choose whether to accept the cancellation. If the applicant does accept the cancellation, the contract requires the respondent to pay a late cancellation fee of 25% of the purchase price. The contract says this is to cover labour, administrative, and materials costs.

Duress

19. The respondent says they felt rushed and pressured to sign the contract. The respondent acknowledges the applicant told them something about 25% but says it was not clear enough for them to understand. The respondent also says the applicant did not provide them a paper copy of the contract, but admit they received an email copy.
20. While they do not use specifically use the word, I find the respondent is arguing "duress." To establish duress, they must show the applicant exercised pressure in an unfair, excessive, or coercive manner.¹ However, I find nothing the respondent said suggests the applicant rose to such a level. The respondent's only allegation is that they felt "rushed" and "pressured," but they do not explain how or why. So, I find the respondent has not proved duress.

¹ See: *Jestadt v. Performing Arts Lodge Vancouver*, 2012 BCSC 1337.

21. To the extent the respondent says they could not read the contract due to their poor eyesight, I note this did not prevent them from signing the contract. In general, when a person signs a contract, they are bound by its terms, even they may not have read or understood the contract.

Liquidated Damages

22. I find the late cancellation fee is a term allowing the applicant to seek liquidated damages. Liquidated damages are, generally, enforceable contract terms that make a pre-estimate of a party's expected loss in the event of a breach of contract.²

23. Here, I find 25% is a reasonable pre-estimate of the damages the applicant suffered. The contract explains the fee's purpose is to cover a variety of costs incurred by the buyer after signing the contract. The applicant says it incurred costs by doing the initial design consultation, attending a second time for technical measurements, and purchasing materials to complete the order's production.

24. So, I find the applicant is entitled to liquidated damages as set out in its March 23, 2023 invoice, totaling \$3,015.14. This is equivalent to 25% of the project's after-tax cost, with credit for the respondent's \$710 deposit.

25. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the amount owing from March 23, 2023, the date of the cancellation fee invoice, to the date of this decision. This equals \$137.77.

26. Under CRTA section 49 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. I find the applicant is entitled to reimbursement of \$175 in CRT fees. It did not claim any dispute-related expenses.

² See: *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690.

ORDERS

27. Within 28 days of the date of this order, I order the respondent to pay the applicant a total of \$3,327.91, broken down as follows:
- a. \$3,015.14 in damages,
 - b. \$137.77 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
28. The applicant is entitled to post-judgment interest, as applicable.
29. Under section CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member