



# Civil Resolution Tribunal

Date Issued: July 5, 2024

File: SC-2023-005023

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Riley v. Desert Diva's and Dons Medical Spa Inc.*, 2024 BCCRT 644

B E T W E E N :

JANICE MARIE RILEY

**APPLICANT**

A N D :

DESERT DIVA'S AND DONS MEDICAL SPA INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr, Vice Chair

## INTRODUCTION

1. Janice Marie Riley paid \$2,000 for a series of six facial treatments from Desert Diva's and Dons Medical Spa Inc. Mrs. Riley says her face reacted poorly to the first treatment so she wanted to discuss her concerns before the second treatment. The parties' relationship deteriorated from there, ultimately ending with Mrs. Riley asking

for a refund. Desert refused. In this dispute, Mrs. Riley claims \$1,666.67 as a refund for the five treatments she did not use. Mrs. Riley represents herself.

2. Desert says that parties' contract provided for no refunds, and Mrs. Riley did not give the treatments a fair chance. Desert is represented by its owner, Anastaszia Cash.

## **JURISDICTION AND PROCEDURE**

3. 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 says 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.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, it is not necessary for me to resolve the credibility issues that the parties raised. There is no other compelling reason for an oral hearing, especially considering the CRT's mandate to provide proportional and speedy dispute resolution. I therefore decided to hear this dispute through written submissions.
5. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
6. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

## ISSUE

7. The issue in this dispute is whether Mrs. Riley is entitled to a refund for the unused treatments.

## EVIDENCE AND ANALYSIS

8. In a civil claim such as this, Mrs. Riley as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. Mrs. Riley's initial consultation with Desert was on January 7, 2023. She met with Ms. Cash. At the end of that consultation, Mrs. Riley decided to buy a package of six microneedling treatments for \$2,000. She filled out an intake questionnaire and signed a two-page waiver.
10. The first treatment was on January 31, 2023. Mrs. Riley became concerned about how long it took for her face to fully heal. Between then and the next scheduled treatment in late February, the parties emailed and texted about Mrs. Riley's concerns. Ultimately, Mrs. Riley was uncomfortable with Desert's responses. On February 22, 2023, she requested a refund for the remaining treatments. Desert offered a partial refund, but this was not acceptable to Mrs. Riley.
11. I find it unnecessary to discuss the parties' disagreements in any further detail. This is because the *Business Practices and Consumer Protection Act* (BPCPA) applies to the parties' contract. I find that Desert did not comply with the BPCPA, and that Mrs. Riley was entitled to cancel the contract as a result. My reasons follow.
12. First, I acknowledge that the parties did not mention the BPCPA in their submissions. Procedural fairness usually requires the CRT to give parties an opportunity to make submissions about an issue they did not address. I did not ask for further submissions here because the BPCPA's requirements are specific and mandatory, so further submissions would pointlessly delay the resolution of this dispute.

13. The BPCPA includes several requirements for contracts called “future performance contracts”, which are contracts where either the full payment or the supply of the good or service is not made when the parties make the contract. The parties’ contract is a future performance contract because Mrs. Riley paid the full purchase price when she agreed to the contract, but she did not receive the treatments at that time.
14. One of the BPCPA’s requirements for future performance contracts is that the supplier (Desert) must provide the consumer (Mrs. Riley) with a copy of the parties’ contract within 15 days (section 23(3)). Mrs. Riley says she never received a copy of the contract, even after emailing Desert twice asking for it. She provided copies of those emails. They are very poor quality, to the extent that I cannot read the body of the emails. I can read their subject headings: one is “Contract” and the other is “Request for Contract”. Also, Desert does not deny that it received these requests. It also does not deny that it never provided Mrs. Riley with a copy of the parties’ contract. I find that Desert did not send a copy of the contract within 15 days of Mrs. Riley signing it, and therefore breached section 23(3).
15. BPCPA sections 19 and 23 also require the parties’ contract to contain details about the transaction, including the total price and the day the services will be complete. It appears that the parties agreed to these details verbally because the parties’ written contract was mostly a waiver. As noted, the BPCPA required Desert to give Mrs. Riley a “copy” of the contract, which necessarily means the BPCPA requires a written contract to include the required terms. Because the parties’ written contract did not include these terms, Mrs. Riley was entitled to cancel it under section 23(5). Under BPCPA section 27, she is also entitled to a refund within 15 days of cancelling the contract. I find she is therefore entitled to the \$1,666.67 she claims.
16. I acknowledge Desert’s argument that Mrs. Riley agreed that the treatments were non-refundable. Mrs. Riley denies agreeing to this, but I find it does not matter. BPCPA section 3 says that a waiver of a person’s rights, benefits or protections under the BPCPA is void. So, Desert’s breach of the BPCPA overrides any term that the treatments were non-refundable.

17. The *Court Order Interest Act* applies to the CRT. Mrs. Riley is entitled to pre-judgment interest on the from March 9, 2023, 15 days after she cancelled the contract, to the date of this decision. This equals \$107.97.
18. 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. Mrs. Riley was successful, so she is entitled to reimbursement of \$125 in CRT fees. She did not claim any dispute-related expenses.

## **ORDERS**

19. Within 30 days of this decision, I order Desert to pay Mrs. Riley a total of \$1,899.64, broken down as follows:
  - a. \$1,666.67 in debt,
  - b. \$107.97 in pre-judgment interest, and
  - c. \$125 in CRT fees.
20. Mrs. Riley is entitled to post-judgment interest, as applicable.
21. This is a validated decision and order. Under 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.

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Eric Regehr, Vice Chair