



# Civil Resolution Tribunal

Date Issued: October 25, 2024

File: SC-2023-007592

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cuthbertson v. Burns*, 2024 BCCRT 1077

BETWEEN:

JANE P CUTHBERTSON

**APPLICANT**

AND:

BOBBIE GARRY BURNS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. The applicant, Jane P Cuthbertson, says the respondent, Bobbie Garry Burns, refused to return a refundable deposit she made on a vehicle he was selling after she decided not to buy it. The applicant claims \$500 for the deposit.

2. The respondent says the deposit was non-refundable, so he was entitled to keep it when the applicant changed her mind about buying the vehicle.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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. These are the CRT's formal written reasons.
5. 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. The respondent indicated he would not be able to upload any evidence as he is not able to use a computer and does not have a helper. The respondent said he may require an oral hearing. However, I find I am properly able to assess and weigh the documentary evidence and submissions before me, including evidence and submissions the respondent provided by mail. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice.
6. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
7. 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.

## **ISSUE**

8. The issue in this dispute is whether the applicant is entitled to \$500 for her vehicle deposit.

## **EVIDENCE AND ANALYSIS**

9. 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 read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.
10. The following facts are undisputed. The applicant found the respondent's ad for a 2006 Nissan X-Trail on Facebook around July 2023. On July 13, the applicant attended the respondent's home to view the vehicle. After she test drove it, the applicant agreed to buy the vehicle for \$13,000. The parties drove to the bank together, where the applicant withdrew \$500 and gave it to the respondent to hold the vehicle until July 17.
11. The applicant says the \$500 was to allow her time to contact her mechanic to determine whether a noise she heard during the test drive was a concern. The applicant says she signed a hand-written note the respondent gave her that showed the \$500 was refundable if she decided not to buy the vehicle.
12. The applicant's husband returned to tell the respondent the applicant had decided not to buy the vehicle, and to collect the \$500. However, the applicant says the respondent gave her husband a note indicating the money was non-refundable. The applicant alleges the respondent altered the hand-written note after she signed it.
13. The respondent denies making any alterations. He says the applicant knew the \$500 was non-refundable, and willingly signed the hand-written receipt he prepared when she presented him with \$500.

14. The respondent submitted a copy of the receipt, which he also says he gave the applicant a copy of. The receipt reads (in part):

Received from Jane Cuthbertson \$500 in cash as holding deposit on my 2006 Nissan xtrail (...) transaction to be finalized by Sat. July ~~15~~ 17/23. Midnite. Deposit is non refundable and remainder of \$12,500 to be paid (reproduced as written).

15. The applicant says the respondent added the “non” in front of the “refundable” after she signed the receipt. Given the spacing of the words in the hand-written receipt, I find this unlikely. The “non” does not appear to have been squeezed in between “is” and “refundable”, as one might expect had the receipt been altered as alleged. Instead, these words appear to flow with similar spacing between them as the rest of the hand-written words. Based on this evidence, I find the receipt likely included the words “non refundable” when the applicant signed it.
16. However, this does not end the matter. Though both parties refer to the \$500 as a deposit, I considered whether it was a true deposit or a partial payment, based on the parties’ intentions. This is because true deposits and partial payments are different at law, and are treated differently when deciding whether or not they must be returned.
17. A “true deposit” is a payment designed to motivate parties to carry out contracts they have agreed to. A buyer who refuses to purchase what they have bargained for generally forfeits the deposit, and the seller is not required to prove damages to keep it.
18. On the other hand, a partial payment is made to facilitate a transaction the parties intended to complete. For example, a homeowner may give a contractor a partial payment to cover materials needed to build a deck. If the buyer decides not to complete the transaction, the seller must prove actual loss to justify keeping a payment made in these circumstances (see *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30).

19. Here, I find the \$500 was a true deposit. The parties agree the deposit held the vehicle for the applicant for a period of time. As described above, the applicant says this was to give her time to consult her mechanic. The respondent disputes this. I find the reason for the hold does not matter. Instead, I find its purpose, which was to make the vehicle unavailable to others for purchase until midnight on July 17, is what makes it a true deposit.
20. The applicant says the respondent continued to advertise the vehicle on Facebook, and left the for sale signs in place on the vehicle during the holding period, when he agreed not to. There is no documentary evidence the respondent agreed to discontinue advertising the vehicle during this time. I prefer the respondent's assertion that he did not wish to discourage other inquiries, in case the applicant changed her mind about buying the vehicle, as I find it makes more sense.
21. In these circumstances, I find the applicant forfeited the \$500 deposit when she refused to complete the parties' agreement to purchase the vehicle. So, I dismiss the applicant's claim.
22. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The respondent was successful, so I find he is entitled to reimbursement of \$25 for CRT fees. I dismiss the applicant's fee claim. Neither party claimed dispute-related expenses, so I order none.

## **ORDERS**

23. I dismiss the applicant's claims.
24. Within 30 days of the date of this decision, I order the applicant to pay the respondent \$25 for CRT fees.
25. The respondent is entitled to post-judgment interest, as applicable.

26. This is a validated decision and order. 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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Megan Stewart, Tribunal Member