



# Civil Resolution Tribunal

Date Issued: February 18, 2025

File: SC-2023-005274

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Donald v. Ramsay*, 2025 BCCRT 225

**B E T W E E N :**

HELEN LOUISE DONALD

**APPLICANT**

**A N D :**

GEORGE RAMSAY and LESLIE RAMSAY

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Amanda Binnie

## INTRODUCTION

1. This dispute is about a failed vacation rental. The applicant, Helen Louise Donald, says she booked a vacation rental with the respondents, George Ramsay and Leslie Ramsay, at their condo in Hawaii. However, she had to cancel her trip, and says she has not received the promised refund or rental credit. As the Ramsays have sold the condo, she claims \$5,000 as reimbursement for the refund and rental credit.

2. Mr. Ramsay says he offered to rebook Mrs. Donald for a later time, but did not hear back from her before he sold the property. He says he can no longer offer a later rental because of the sale. Mrs. Ramsay says she does not make decisions about the rental, and only acts as a secretary. I infer the Ramsays ask that I dismiss Mrs. Donald's claims.
3. Mrs. Donald is represented by her son, who is not a lawyer. The Ramsays 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 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. I also find there is no significant credibility issue in this dispute. 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.
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 court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. 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.
8. As this dispute concerns a rental property in Hawaii, I considered whether I have jurisdiction to decide it. However, all parties live in Canada and no one raised any concerns about the CRT deciding this dispute. So, I find the contract was made in Canada. Mrs. Donald lives in British Columbia. Though the Ramsays live in Alberta, I find they have agreed, or attorned, to the CRT's jurisdiction.

### ***Mrs. Ramsay***

9. Mrs. Ramsay says she does not make decisions about the condo, and only acts in a secretary role. So, I consider whether Mrs. Ramsay was a party to the contract.
10. Here, the money draft for the rental was written to George and Leslie Ramsay. The invoice says "George & Leslie Ramsay". Emails to Mrs. Donald are signed Leslie and George. So, I find the evidence shows Mrs. Ramsay was a party to the agreement with Mrs. Donald and a proper respondent to this dispute.
11. This conclusion is not changed by how the Ramsays chose to divide work between themselves or to hold property.

### **ISSUE**

12. The issue in this dispute is whether Mrs. Donald is entitled to a \$5,000 refund.

### **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, Mrs. Donald must prove her claims on a balance of probabilities. 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.

14. Mrs. Donald and her husband JD stayed in the Ramsays' condo in Hawaii for a bout a month every January since 2016. There is no claim with about any of those prior bookings, and I infer there were no issues during those stays.
15. The Ramsays' November 21, 2021 invoice shows Mrs. Donald's January 2022 stay was booked for 28 days, from January 3 to 31. The total was \$5,078.42 USD, which was based on a discounted nightly rate of \$150, a \$125 cleaning fee, and taxes. There is no evidence of any other written contract between the parties, and I find this invoice forms the basis of the parties' agreement.
16. On December 10, 2021, Mrs. Donald paid the full \$5,078.42 USD by bank draft.
17. It is undisputed that in December 2021, JD suffered some health issues and Mrs. Donald and JD were unable to make the trip. While the parties initially discussed Mrs. Donald's family members using the rental instead, this did not happen. I accept Mr. Ramsay's evidence that Mrs. Donald fully cancelled the rental around December 19, 2021.
18. I infer from the parties' emails they had phone calls discussing a refund. The Ramsays' April 25, 2022 email says the Ramsays were able to re-rent all but 6 of the 28 days Mrs. Donald booked. So, the Ramsays offered a 2-week credit on future rental days and a cash refund of \$1,539 USD, based on the days they could re-rent.
19. However, the Ramsays sold the condo in May 2022. In later emails, they told Mrs. Donald they would no longer be able to offer a future stay to Mrs. Donald, but would be sending a cheque for the refundable portion. It is undisputed that Mrs. Donald has not received any of the offered refund from the Ramsays or subsequently stayed at the condo.

***Is Mrs. Donald entitled to a \$5,000 refund?***

20. Mrs. Donald argues that because the Ramsays were able to re-rent the condo for all but 6 days, she is entitled to a refund of the full \$5,078.42 USD (or \$6,555.43 CAD),

minus 6 days. She says given the CRT's small claims maximum, \$5,000 CAD, this means the Ramsays will keep \$1,555 CAD for the 6 days they could not rebook.

21. Mr. Ramsay says Mrs. Donald made a personal choice not to book, and he never offered a full refund. He says Mrs. Donald never contacted him about a re-booking. He does not explicitly comment on the partial cash refund. However, in Mrs. Donald's recorded phone conversations, Mr. Ramsay confirms he agreed to a partial refund. This is supported by the Ramsays' emails to Mrs. Donald after the condo's sale.
22. The parties had no written agreement about cancellations. However, I find the Ramsays made an offer in April 2022, which was 2 weeks' rental credit and a refund of \$1,539 USD. I find the parties' subsequent emails and phone calls show Mrs. Donald accepted this offer. So, regardless of the original agreement's lack of cancellation term, I find the parties amended their agreement.
23. When parties amend an existing agreement, there is not necessarily a need for "fresh consideration" for the change to be enforceable (see: *Rosas v. Toca*, 2018 BCCA 191). So, I find the Ramsays' offer of a rental credit and partial refund offer was a binding and enforceable change to the parties' original agreement. So, I find Mrs. Donald is entitled to a refund of \$1,539 USD.
24. The Ramsays sold the condo in May 2022, which I find was not enough time for Mrs. Donald to rebook. This is confirmed by the Ramsays' emails that Mrs. Donald was not able to "get anything on the books" before the sale. It is undisputed the condo's new owners did not honour Mrs. Donald's rental credit. So, I find this credit no longer has any value to Mrs. Donald. Based on Mrs. Donald's reduced \$150 rate, I find she is entitled to a \$1,950 USD in compensation for the lost rental credit.
25. So, I find Mrs. Donald is entitled to \$3,489 USD in total. Neither party provided evidence on the applicable exchange rate. So, I have used the current exchange rate from the Bank of Canada's website. Based on that rate, this equals \$4,942.52 CAD.

26. The *Court Order Interest Act* applies to the CRT. However, Mrs. Donald chose not to claim pre-judgment interest, so I make no order about it.
27. 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 Mrs. Donald was mostly successful, I find she is entitled to reimbursement of \$175 in paid CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

28. Within 30 days of the date of this decision, I order the Ramsays to pay Mrs. Donald a total of \$5,117.52 broken down as follows:
- a. \$4,942.52 in debt, and
  - b. \$175 in CRT fees.
29. Mrs. Donald is entitled to post-judgment interest, as applicable.
30. 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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Amanda Binnie, Tribunal Member