



# Civil Resolution Tribunal

Date Issued: September 16, 2025

File: SC-2024-004930

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kundu v. Smith*, 2025 BCCRT 1284

B E T W E E N :

RENA MARIE KUNDU

**APPLICANT**

A N D :

ANNE SMITH and DOUGLAS SMITH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. This dispute is about reimbursement of money paid towards a trailer.
2. The applicant, Rena Marie Kundu, agreed to buy a trailer from the respondents, Anne Smith and Douglas Smith. Miss Kundu paid \$2,000 towards the purchase

price, but then changed her mind about buying the trailer. The Smiths reimbursed Miss Kundu \$1,500. Miss Kundu claims the remaining \$500 she paid the Smiths.

3. The Smiths say after Miss Kundu cancelled the parties' agreement, they dropped the trailer's price by \$500 to sell it quickly. For this reason, the Smiths say it was fair of them to return only \$1,500 of the \$2,000 Miss Kundu paid them.
4. Miss Kundu is self-represented. Mrs. Smith represents the Smiths.

## **JURISDICTION AND PROCEDURE**

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
6. 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 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 an oral hearing is not necessary in the interests of justice.
7. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. In his Dispute Response, Mr. Smith says the Smiths did not receive "the full claims package", and did not get information about how to respond to Miss Kundu's claims. Mr. Smith does not explain what he thought was missing from the "claims package", and it appears from his Dispute Response and the Smiths' submissions that they were able to fully respond to Miss Kundu's claims. Given I have found in the Smiths'

favour, I did not consider it necessary to ask for additional information on these points.

## **ISSUE**

9. The issue in this dispute is whether the Smiths must reimburse Miss Kundu \$500 for part of the payment she made towards a trailer.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Miss Kundu must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence, but only refer to information I find necessary to explain my decision.
11. The following background is undisputed. In April 2024, Miss Kundu agreed to buy a trailer from the Smiths. On April 22, Miss Kundu e-transferred the Smiths a \$2,000 "down payment". Then, on April 24, Miss Kundu changed her mind about the purchase and asked the Smiths to refund the down payment. The Smiths agreed, subject to the trailer's sale. In early May, the Smiths sold the trailer to someone else for \$500 less than Miss Kundu had agreed to pay for it. So, the Smiths returned \$1,500 of the \$2,000 down payment.
12. Miss Kundu says she is entitled to the return of the entire amount she paid because the parties did not agree her payment was non-refundable. She also says the Smiths agreed to return the down payment once they sold the trailer.
13. The Smiths say they are under no legal obligation to return the \$2,000. They say they accepted Miss Kundu's down payment as a "good faith" gesture she intended to buy the trailer. They put that money towards a different trailer. When Ms. Kundu cancelled the parties' agreement, the Smiths say they had to find a way to sell the trailer quickly to be able to complete their purchase of the other trailer, so they lowered their trailer's price by \$500. For this reason, they say Miss Kundu is only entitled to the \$1,500 they have already refunded her.

14. In law, money paid by one party to another before completion of a sale is considered either a “true deposit” or a “partial payment”. These mean different things, and are treated differently. Here, the parties used the terms “down payment” and “deposit”. The way a payment is characterized and treated, however, depends on the context in which it was made and the parties’ intentions, not just on the words the parties used to describe it.
15. A true deposit is designed to motivate contracting parties to carry out transactions they agreed to. A buyer who refuses to purchase what they bargained for generally forfeits the deposit. See *Tang v. Zhang*, 2013 BCCA 52 at paragraph 30.
16. In contrast, a partial payment of the purchase price is made with the intention of completing a transaction. See *Conner v. Bulla*, 2010 BCCA 457 at paragraph 14. For example, a homeowner may give a contractor a partial payment to cover materials to rebuild a deck. For a seller to keep a partial payment, they must prove an actual loss.
17. Here, I find the \$2,000 was a true deposit. This is because Miss Kundu offered it to the Smiths to hold the trailer for her, and the Smiths eventually accepted that offer when they found a trailer they wanted to buy. I find the intention behind the \$2,000 payment was to ensure the parties followed through with the transaction, because the Smiths had committed to buying a trailer themselves and needed to sell their trailer to do so. So, I find Miss Kundu was not entitled to a refund of her deposit. Even if I had concluded the \$2,000 was a partial payment, I would have found the Smiths had proven a loss, because they ended up selling their trailer for less than what Miss Kundu had agreed to pay.
18. What about the Smiths’ promise to return Miss Kundu’s deposit when they sold the trailer? As a general rule, a promise is not a binding contract unless it is made under seal or supported by some “consideration”. This means something of value in the eyes of the law must be given to make a promise enforceable. An informal gratuitous promise does not amount to a contract. See *Shamrock Fencing (1992) Ltd. v. Walker*, 2016 BCPC 0244 at paragraph 14.

19. Here, Miss Kundu did not provide anything of value to the Smiths in exchange for their promise to return her deposit when they sold the trailer. So, I find Miss Kundu cannot rely on the Smiths' gratuitous promise for the deposit's return.
20. Finally, Miss Kundu argues the Smiths have been unjustly enriched by \$500. Unjust enrichment is based on the idea that one party should not benefit at another's expense unless there is a legal reason for it. See *Kerr v. Baranow*, 2011 SCC 10 at paragraph 31. To establish unjust enrichment, Miss Kundu must prove the Smiths were enriched, she suffered a corresponding loss, and there was no valid basis for the enrichment. See *Moore v. Sweet*, 2018 SCC 52 at paragraph 37.
21. I find the Smiths have not been enriched. They returned \$1,500 of the \$2,000 Miss Kundu paid them. They only kept \$500 because they undisputedly sold the trailer to another buyer for \$500 less than Miss Kundu agreed to pay. So, I find Miss Kundu has failed to prove unjust enrichment.
22. Given the above, I dismiss Miss Kundu's claim for \$500.

## **CRT FEES AND DISPUTE-RELATED EXPENSES**

23. 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. However, none of the parties paid CRT fees or claimed CRT expenses so I make no award.

## **ORDER**

24. I dismiss Miss Kundu's claims.

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Megan Stewart, Tribunal Member