



Civil Resolution Tribunal

Date Issued: March 14, 2018

File: SC-2017-003081

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jenkins v. Jibu*, 2018 BCCRT 79

B E T W E E N :

Desmond Jenkins

APPLICANT

A N D :

Behnan Jibu

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Desmond Jenkins, seeks a refund of \$900 for a car headlight housing assembly (headlight) he purchased from the respondent, Behnan Jibu.

The applicant says the respondent promised that the housing was an adaptive front-lighting system (AFS) headlight, but he discovered after installation that it was not AFS. AFS headlights change direction as the driver steers.

2. The applicant also seeks \$600 for the cost of replacing the improper headlight, and \$400 in compensation for time taken off work to deal with the dispute.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issue in this dispute are:
 - a. Is the respondent required to reimburse the applicant \$900 for the headlight?
 - b. Is the respondent required to pay the applicant \$600 for headlight replacement costs?
 - c. Is the respondent required to pay the applicant \$400 for missed work?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Refund for Headlight

10. The respondent advertised parts from a salvaged car on Craigslist. He says he did not advertise the headlight as an AFS headlight. He says he told the applicant he could return the headlight if it was broken, as he tested it and knew it worked, but it was the applicant's responsibility to make sure it was the correct part.
11. Copies of text messages provided in evidence show that the applicant texted the respondent on June 13 stating that he was interested in the front driver's side headlight assembly. He asked if the car had AFS. The respondent texted back and said the headlight was not available, but he could get the applicant one in perfect condition for \$900 cash.
12. The applicant texted back, "With afs?" The respondent replied, "yea with adaptive." The applicant sent another text asking if he could see the headlight powered and working, and the respondent replied that it was "the whole headlight assembly with the computer."

13. I find that this text exchange establishes that the parties specifically agreed that the respondent would sell the applicant an AFS headlight. The initial text from the applicant specified that he wanted an AFS headlight. He asked the respondent if the headlight in question was AFS, and the respondent replied, ““yea with adaptive.”
14. In a written statement provided in evidence, the respondent said the applicant contacted him by telephone and asked him if the headlight was AFS, but he did not know what AFS stood for and told the applicant he should contact someone to make sure the headlight was correct. I do not accept that evidence as it is inconsistent with the written text messages exchanged by the parties at the time of the purchase. In those texts, the respondent stated that the headlight was adaptive, which I interpret as meaning the respondent knew he was telling the applicant the headlight was AFS. The respondent also wrote that he had contacted the Infiniti dealer himself, and the Infiniti dealer said the light was AFS.
15. The respondent also says the June 13 text message, “yea with adaptive” refers to the car the headlight was taken from. I do not agree. The text conversation was about the headlight rather than any particular car, since the respondent had offered to get the headlight for a different car than the one originally advertised.
16. The respondent agrees that the headlight purchased by the applicant was not AFS. The respondent says the applicant took a “leap of faith” when he purchased the headlight, and should have done more research. I disagree. Before completing the purchase, the applicant asked to see the headlight working. The respondent said it worked perfectly, and said he had confirmed with the Infiniti dealer that it was an AFS headlight. The applicant texted again, asking if there was a guarantee if the light did not work, as he had no place to test it. The respondent replied that he could return it to him.
17. Generally private sales of items such as car parts are “buyer beware”, which mean that the buyer must assess the condition of the item before purchasing it and there

is no implied or legislated warranty. However, I find that the respondent, though his text messages, expressly warranted that the headlight was AFS.

18. The respondent provided undated copies of Craigslist advertisements stating that sales are final, with no returns, and buyers should contact the Infiniti dealership for “part fitment.” However, I find that these advertised terms were replaced by the written contract between the parties set out in the text messages.
19. The text messages show that the respondent knew the applicant only wanted an AFS headlight. The respondent texted that the applicant could return it if it did not work. For that reason, I find that the respondent breached a written contract when he refused to refund the applicant for the non-AFS headlight. The respondent must refund the \$900 purchase price. Since the respondent has not requested return of the non-AFS headlight, I do not order the applicant to return it and he may dispose of it as he wishes.

Replacement Costs

20. The applicant seeks \$600 for the cost of replacing the headlight. Damages for breach of contract are generally intended to place the claimant or applicant in the position they would have been in if the contract had been carried out as agreed: *Water’s Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319, at paragraph 39.
21. The original agreement between the parties was for headlight purchase only, without installation. The applicant has not provided documentation showing that he paid anyone to replace the headlight, and his text messages show that he installed the non-AFS headlight himself.
22. I have ordered that the respondent refund the purchase price, which will put the applicant in the position he would have been in if he had never purchased the non-AFS headlight. For that reason, I do not order the respondent to pay headlight replacement costs.

Missed Work

23. The applicant seeks \$400 in compensation for time missed from work in order to deal with this dispute.
24. The tribunal typically does not award a party expenses for their own time in dealing with a dispute. This is consistent with the tribunal's practice of not generally awarding legal fees. I therefore do not order compensation for the applicant's missed work.

Summary

25. The respondent breached his contract to sell the applicant an AFS headlight, so he must refund \$900 to the applicant. The respondent is not required to pay for a replacement headlight or for missed work.
26. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
27. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)*, as set out below in my order.

ORDERS

28. I order that within 30 days of this decision, the respondent pay the applicant a total of \$1,030.55, comprised of:
 - a. \$900 as a refund for the headlight, plus \$5.55 in pre-judgment interest under the COIA, and
 - b. \$125 as reimbursement of tribunal fees.

29. The applicant is entitled to post-judgment interest under the COIA.
30. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
31. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member