



Civil Resolution Tribunal

Date Issued: April 4, 2018

File: SC-2017-004437

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Heer v. John's Moving*, 2018 BCCRT 113

BETWEEN:

Rhonda Heer

APPLICANT

AND:

John's Moving

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael F. Welsh, Q.C.

INTRODUCTION

1. This is a case about bedbugs.
2. The applicant, Rhonda Heer, seeks damages as a result of bites she says came from bedbugs that were in a sofa and chair she bought from the respondent,

John's Moving. The principal of that business is John McEwen. I will refer to them both as the "respondent" and to Ms. Heer as the "applicant."

3. The respondent denies there were any bedbugs in that sofa and chair when he sold it to the applicant. He also defends this claim on the basis that, as a matter of law, the furniture was sold with no warranties and he relies on Section 18 of the *Sale of Goods Act* of BC.
4. The parties acted for themselves and presented their evidence and made their submissions in writing.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims matters that fall 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.
6. 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.
7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;

- c. Order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Were there bedbugs in the sofa and chair sold by the respondent to the applicant?
 - b. If so, is the respondent legally liable to the claimant?
 - c. If the respondent is legally liable, what are the damages he should pay?

EVIDENCE AND FINDINGS OF FACT

10. The parties agree that the applicant purchased the sofa and chair from the respondent for \$225 and that he delivered them to the claimant on July 5, 2017. They also agree that they both checked out the sofa and chair together on July 4, 2017 while the furniture was stored in the respondent's storage container.
11. By way of background, the respondent operates a moving business in the Prince George area. In March 2017 the respondent was hired by the applicant to move her to the apartment where she now lives.
12. According to the applicant, toward the end of June, 2017, she saw the respondent moving another tenant into the same building where she now lived, and they chatted. He agrees they spoke.
13. He had noted while moving the applicant in March that her sofa was "worn out," as he put it. In the June 2017 conversation he told the applicant he had a sofa and chair in storage that he could sell her for \$225. The applicant told him she wanted to inspect the sofa and chair, particularly in order to feel the cushions.

14. As noted earlier, they arranged for her to meet him at his storage container where she did an inspection of the furniture on July 4, 2017. She bought the sofa and chair the next day.
15. The respondent says there was no sign of any bedbugs on the furniture when they inspected it. The claimant says she saw bits of white fluff on it that she thought were dandelion fluff at the time. She provided a picture of the furniture in storage that shows this white fluff. I accept her evidence that it was on the furniture in the storage container.
16. The respondent says he received the furniture from an elderly woman in January 2017 in trade for moving services and it was stored in his storage container from then until it was sold. I accept this evidence of the history of the furniture.
17. The claimant states that, on July 13, 2017, her grandchildren slept overnight on the sofa.
18. She says that, on July 16, 2017, she noticed she had “hive like marks” on her legs and backside. She spoke with her daughter who checked the grandchildren and found similar marks on them. The applicant saw her doctor who diagnosed the marks as bedbug bites.
19. The applicant hired Interior Pest Control and provided a copy of its service report of July 21, 2017. That service report notes “upon inspection of the beds and couches, the bed has no sign of infestation, meaning the infestation is caused by the couches (evidence and bugs on couch).” The applicant states the service person pointed out bedbug eggs in cracks in the sofa and says they looked like dandelion fuzz. Interior Pest Control fumigated the apartment for bedbugs.
20. I accept the applicant’s statements of these events as true.
21. The respondent says that, after the applicant contacted him and said there were bedbugs in the furniture he sold, he went to her apartment on July 24, 2017, to

look at the furniture. He could see no evidence of bedbugs. This was three days after the apartment had been fumigated.

22. He states that he contacted the manager of the building where the elderly woman lived who had given him the sofa and chair. The manager advised there had been no reported infestations of bedbugs in that building and he provided a letter from the manager confirming this.
23. I accept the evidence of the respondent on these points as true. It is not in conflict with the evidence provided by the applicant.

SUBMISSIONS OF THE PARTIES:

24. The applicant submits that the bedbugs must have been in the furniture she bought from the respondent. She had no bedbugs before. She noted the bites on herself about 10 days after the sofa and chair were in her apartment. Her grandchildren, who also had bites, slept over about a week after the furniture arrived.
25. The respondent submits that the bedbugs could not have been in the sofa and chair, as there were no reports of them in the building of the woman from who he got them, and as they were stored in an unheated storage container from January to July.
26. Both parties provided me with internet searches about bedbugs to support their positions. However, I cannot rely on general internet search information and disregard it.
27. The respondent also states that he noticed mouse traps and a hole in a screen door when he was in the apartment on July 24, 2017. He suggests that rodents may have brought in bedbugs or that they were already in the carpets of the apartment.

28. Lastly, he relies on section 18(a) of the BC *Sale of Goods Act*. That section states that “there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale” unless three conditions are met. They are:
- a. The buyer made known to the seller the purpose for which she required the goods;
 - b. The buyer relied on the seller's skill or judgment; and
 - c. The goods are of a description that is in the course of the seller's business to supply.

ANALYSIS AND CONCLUSION:

29. Based on the evidence I earlier accepted, I find as a fact that the sofa contained bedbugs or bedbug eggs. How they got into the sofa has not been shown, but the pest control report notes they were there and not in the applicant's bed. From this I infer they arrived in the sofa.
30. The presence of the mousetraps and hole in the screen do not allow me to make factual inferences that the bedbugs came from rodents. To do so would be to speculate.
31. These factual conclusions do not end the matter, however. As I noted earlier, section 18 of the *Sale of Goods Act* restricts any implied warranties as to fitness to commercial sales from a seller in the business of selling that type of good. The respondent does not sell furniture for a living. He is a commercial mover.
32. For the same reason, and this was not a sale by description, and as the applicant inspected the furniture, an implied warranty of the furniture being of merchantable quality under section 18(b) of the *Sale of Goods Act* also does not apply.

33. So, as a matter of law, the respondent is not liable for the bedbugs being in the sofa. In reaching this conclusion I also rely on the case of ***Clayton v. North Shore Driving School et al.***, 2017 BCPC 198 @ paras. 93-98.
34. As a result, it was a case of “buyer beware” for the applicant.
35. The respondent raised concerns about Facebook postings by the applicant’s daughter about him that he says may affect his business. He made no formal claims about this, however, and in any event, these are not matters over which the tribunal has any jurisdiction.

ORDERS

36. I order that the claims of the applicant are dismissed.

Michael F. Welsh, Q.C., Tribunal Member