



# Civil Resolution Tribunal

Date Issued: June 4, 2018

File: SC-2017-004968

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sonkin v. Shmil*, 2018 BCCRT 231

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

Ekaterina Sonkin

**APPLICANT**

**A N D :**

Lily Shmil

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a used bed the respondent Lily Shmil sold the applicant Ekaterina Sonkin. The applicant says the bed was in “damaged” condition rather than in the advertised “used” condition, because it had some dents, cuts or

scratches, and was missing some screws on delivery. The respondent says the bed was sold 'as is' and that the applicant declined the inspection offered. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

2. These are the formal written reasons of the Civil Resolution Tribunal (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.
3. 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. An oral hearing was not requested.
4. 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.
5. Under tribunal rule 126, 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.
6. I pause to note the parties each provided evidence and submissions about alleged defamatory comments and/or harassment the other made. Those issues are not relevant to this dispute and I will not comment further upon them. In any event, defamation is outside the tribunal's jurisdiction.

## **ISSUES**

7. The issues in this dispute are whether the respondent misrepresented the bed to the applicant, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

8. I have only commented on the evidence and submissions to the extent necessary to give context to these reasons. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities.
9. On or about September 6, 2017, the applicant responded to the respondent's ad on a buy and sell website called Letgo, for the used bed. The list price was \$350, plus \$100 for a 6-month old mattress if desired. The parties negotiated \$450, including \$50 for delivery.
10. The queen-sized bed at issue has a white jewel-tufted leather headboard, with a similar style bedframe, along with the slats for a mattress to sit on. The ad noted one of the slats was broken. The ad said the bed was disassembled and "ready to go". Several photos of the bed, assembled, were included with the ad, one of which shows it without the mattress. There were also a few close-up photos in the ad.
11. On September 8, 2017, the applicant texted the respondent that she had changed her mind and was not going to inspect the bed, as long as everything was "as described". The respondent then delivered the bed and mattress.
12. In this dispute, the applicant claims a \$450 refund plus \$185 for storing the bed. I note at the outset the applicant expressly stated in the parties' post-purchase texts that the \$100 mattress was as described and she was going to keep it. It is unclear to me why the applicant now claims for the mattress. Given my conclusion below, nothing turns on it.

## Buyer beware

13. The respondent's sale of the used bed to the applicant was a private sale. The respondent was not in the business of selling beds. In general, a private sale buyer, like the applicant, bears the risk that the bed's quality is somehow defective.
14. Buyer beware means that a buyer must assess the condition of the item before buying it, which in the bed's sale would mean an inspection, and there is no implied or legislated warranty. Here, the applicant expressly decided not to do that inspection, despite it having been offered and initially arranged.
15. Buyer beware does not apply when there is: (i) a breach of contract, (ii) fraud, (iii) non-innocent misrepresentation, (iv) there is a warranty, or (v) a latent defect that cannot be discovered by reasonable inspection (see: *Nixon v. MacIver*, 2016 BCCA 8 (CanLII)).
16. In other words, the applicant must show that buyer beware should not apply because one of the conditions above existed.
17. There was no breach of contract, which I find is not particularly disputed. The bed sale completed. There was no fraud, which I find was not alleged and certainly no evidence established. There was no warranty, as I find the bed was sold "as is". In this respect, I accept the respondent's evidence that there was no "return policy" on the Letgo sale site. The applicant's issues are not latent defects, as they are all apparent on a reasonable inspection.
18. The applicant's claim is therefore essentially that the respondent misrepresented the bed by describing it as used, rather than damaged, and, by failing to identify every defect. I do not agree the respondent misrepresented the bed.
19. The respondent identified the bed as used in her listing. She did not say it was in perfect condition. She did not say it had no dents, tears, or loose threads. The applicant provided photos, which show its used condition.

20. There was nothing in the respondent's ad description that was inaccurate about the bed's condition. While the applicant's own photos provide close-ups showing the damage that may not have been readily apparent in the respondent's photos, I do not find that the respondent misrepresented the bed. As for the "dent", shortly after delivery the applicant texted the respondent and noted the dent was visible in the ad photo, rather than something that had occurred upon delivery. I find the dent was there to be seen in the advertisement, but that the applicant did not notice it until she saw the bed after it was delivered.
21. Again, it was open to the applicant to inspect the bed and she expressly chose not to do so. I have reviewed the Letgo sales rules in evidence. Its relevant terms are that the seller must "accurately and fairly" represent the item being sold. I find the respondent did so. I find the respondent did not misrepresent the bed by failing to describe or highlight every dent or scratch.
22. As for the missing screws, the applicant says upon delivery she only had 30 instead of all 48. I accept that any screws that were missing were misplaced during delivery to the applicant, which I find is not particularly disputed. That is not the same thing as mispresenting the bed. I accept that before this dispute started, the respondent offered to have a third party deliver the missing screws that she had discovered had been left behind, but the applicant declined. The applicant did not respond to this submission in her reply. I find the applicant's decision not to accept the screws is determinative.
23. In summary, the buyer beware principle applies, as none of the exceptions are applicable here. I dismiss the applicant's claims. Given my conclusions above, I find the applicant is not entitled to a refund of the \$450 she paid for the bed and mattress. She is similarly not entitled to \$185 for storing the bed, as claimed.
24. The applicant was unsuccessful. Under section 49 of the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of any tribunal fees.

**ORDER**

25. I order that the applicant's dispute is dismissed.

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Shelley Lopez, Vice Chair