



Civil Resolution Tribunal

Date Issued: July 4, 2018

File: SC-2017-006750

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Altieri v. Millwood Furniture Ent. Ltd.*, 2018 BCCRT 300

BETWEEN:

Neil Altieri

APPLICANT

AND:

Millwood Furniture Ent. Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about bedroom furniture sold and delivered by the respondent Millwood Furniture Ent. Ltd. to the applicant Neil Altieri. The applicant claims the quality of the furniture sold was not as advertised, there were defects in the product when delivered, and the respondent damaged his floor on delivery. 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. Neither party requested an oral hearing.
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.

ISSUE

6. The issue in this dispute is to what extent, if any, the respondent owes the applicant a) a refund for furniture, and b) for alleged damage to the applicant's floor.

EVIDENCE AND ANALYSIS

7. 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.
8. The applicant bought from the respondent 3 beds, 2 queen and 1 double, along with 2 mattress sets and night tables. The back of the invoice states, among other things, that once delivered the furniture cannot be returned or exchanged. As noted, this dispute is about the beds' quality, as well as claimed flooring damage. If repairs cannot be made, the applicant seeks the \$2,879.45 refund for the bedroom sets (he wants to keep the mattresses).
9. The respondent delivered the furniture on November 8, 2017 around noon. After the respondent's delivery team assembled the furniture, and noted his disagreement with the beds' quality. In his submissions, the applicant says his "current disagreement" is with the visible nail holes on the headboard, which he wants filled and painted. He submits that he did not see the visible nail holes on the bedroom set on the showroom floor, because the nail holes are only visible when laying on the bed and cannot be seen when looking at the bed. The applicant also submits he wants the "flimsy" headboards addressed or the bedroom sets refunded. The respondent agrees to fix the paint blemishes. Therefore, I have otherwise addressed only the nail holes and the alleged flimsy headboards in terms of the applicant's claims for defects and poor quality.
10. In particular, the applicant says in the showroom the salesperson commented that "it was assembled quick in the showroom" and not to worry. The applicant says the delivered beds all have flimsy headboards and are "hook together 'one series' beds", which he says the salesperson failed to disclose. He says the installers warned him not to move the bed by the side boards as it will easily come apart. Overall, the applicant was not happy with the beds' quality, which he noted on the delivery slip.

11. The respondent's sale of furniture to the applicant was not 'buyer beware'. This is because the respondent is in the business of selling furniture. As such, the implied warranty provisions in section 18 of the *Sale of Goods Act* apply to it, namely that each item is in the condition described and is of saleable quality. Under the *Sale of Goods Act*, if the buyer has examined the goods, there is no implied condition about defects that the examination ought to have revealed. Here, the applicant did examine the beds on the show room floor, but did not lay on the bed and so did not notice the nail holes until the beds were installed in his home.
12. The respondent says the beds delivered are substantially similar in finish to those on the showroom floor, which I accept is proven given the photos before me. The respondent says the applicant's claim is not a warranty issue. I agree.
13. I find the nail holes were there to be seen on the showroom floor and were not defects. In any event, the applicant ought to have seen the nail holes had he done a thorough examination. While it may be that the applicant would have preferred a bedroom set without visible nail holes, I find that is not the respondent's fault. I dismiss the applicant's claim with respect to the nail holes.
14. I find the applicant's photos of the bed are not helpful in showing the alleged poor quality of the "flimsy" headboards. The style of the beds' assembly was there to be seen on the showroom floor. I also find the applicant has not proven any defect or that they were not of saleable quality. The fact that the beds cannot be easily moved by their side boards does not prove they are not of saleable quality. I further find the applicant has not proven the beds were not in the condition described by the respondent. I dismiss the applicant's claim with respect to the alleged 'flimsy headboards', and therefore with respect to the bedroom sets.
15. What about the applicant's claim for his damaged flooring? He provided 2 photos of flooring, each with a small dent in it. It is not possible to tell the area of the house, given the close-up nature of the photos. The respondent says because the applicant failed to identify the damage at the time the installers left, he has not proven the installers caused the damage. The respondent did not dispute that the

applicant's flooring was essentially brand new. I find that on a balance of probabilities the applicant has proved the respondent's installers damaged the flooring. I find there is no waiver of such damage in the contract before me.

16. While the applicant claims \$504 to repair the damage, his own typed quote (from information he obtained over the phone and by email) totals \$481.17. There is no explanation before me as to the difference. I find the applicant is entitled to an order for \$481.17. There is no order for pre-judgment interest because the evidence is that the applicant has not yet had the repair done.
17. The applicant was partially successful. In accordance with the Act and the tribunal's rules, I find the applicant is also entitled to reimbursement of half the \$175 he paid in tribunal fees, namely \$87.50. The respondent does not claim fees or expenses.

ORDERS

18. Within 14 days, I order the respondent to pay the applicant a total of \$568.67, broken down as follows:
 - a. \$481.17 as compensation for the applicant's flooring damage, and
 - b. \$87.50 in tribunal fees.
19. The applicant is also entitled to post-judgment interest, as applicable. I also order the respondent to reasonably repair the paint blemishes on the bedroom furniture sets, within 14 days, within business hours.
20. 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.

21. 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.

Shelley Lopez, Vice Chair