



Civil Resolution Tribunal

Date Issued: October 12, 2018

File: SC-2017-005999

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Partington v. Moore Appliances (2012) Ltd.*, 2018 BCCRT 612

B E T W E E N :

Richard Partington

APPLICANT

A N D :

MOORE APPLIANCES (2012) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrew D. Gay, Q.C.

INTRODUCTION

1. The applicant, Richard Partington, purchased a fridge and other household appliances from the respondent, MOORE APPLIANCES (2012) LTD. After the applicant paid his deposit, the respondent determined that the fridge the applicant ordered had been discontinued. The parties agreed that the respondent would order

a newer model and the applicant would pay a higher price. Unfortunately, the newer model arrived damaged and had to be returned. By this point, relations between the parties had soured. The respondent reimbursed the applicant \$3464 for the newer model fridge and they ceased doing business with one another.

2. The applicant now claims that he had to make alterations to his kitchen to accommodate the fridge he eventually purchased, as it was a different size than the fridge he originally ordered. He also claims he suffered inconvenience by being without a fridge for a number of months and that he suffered loss because he eventually had to purchase a fridge at a higher price. He further alleges that the amount of the reimbursement received from the respondent was too small. The applicant seeks a total of \$2,600 in compensation. Both parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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.
4. 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.
5. 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.

6. 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.

ISSUES

7. The first issue is whether the respondent must pay for the applicant's kitchen alterations that he says were necessary due to the change in fridge type, and whether the respondent must compensate the applicant for his inconvenience and for the higher price of the fridge he eventually acquired. The second issue is whether the respondent failed to reimburse the applicant the correct amount for the fridge.

EVIDENCE AND ANALYSIS

8. On January 23, 2017, the applicant paid a deposit of \$3000 to the respondent toward the purchase of a fridge and other appliances. The price that the respondent quoted for the fridge was \$2700 plus tax.
9. For reasons which neither party explained, nothing then happened until August, 2017, when the applicant paid the balance owing of \$12,280, received some of the appliances, but did not receive the fridge.
10. At some point between January and August of 2017, the fridge that the applicant ordered was discontinued. In August of 2017, the respondent offered to order a newer model for the applicant, but it was more expensive. The applicant agreed to this. The respondent did not charge the applicant the full amount of the price difference. The applicant paid \$1000 more for the newer model, inclusive of tax.
11. The respondent delivered the new fridge to the applicant, but it was found to be damaged on delivery. There is no evidence that this was the respondent's fault. The parties agreed that the respondent would take back the fridge.

12. The applicant says that he then asked the respondent to obtain another fridge. The respondent says the applicant had become extremely rude by this point and was harassing his employees. Accordingly the respondent reimbursed the applicant in the amount of \$3464 for the cost of the newer model fridge so that the applicant could purchase a new fridge elsewhere.
13. The fridge that the applicant ended up buying did not fit in the custom size fridge enclosure in his kitchen. As a result he incurred cost for electrical, plumbing, carpentry and drywall work to accommodate the new fridge. He also claims he had to spend more on the fridge he ended up purchasing than he spent on the fridge from the respondent. He also claims that he suffered inconvenience as a result of not having a fridge for approximately four months and seeks compensation for this inconvenience. In total, the applicant claims \$2,600 from the respondent.
14. I find that the applicant is not entitled to compensation for the alterations to his kitchen, nor for the price differential between the fridges, nor for inconvenience.
15. To be entitled to compensation, the applicant must establish that the respondent breached the contract between them, and that the breach is what caused the applicant to suffer a loss or incur expense. Further, if the applicant is claiming he incurred expense, he must prove the amount incurred.
16. The applicant has provided no evidence to explain why he was forced to purchase a fridge that did not fit within the fridge enclosure in his kitchen, nor any evidence that he was forced to purchase a more expensive fridge. Accordingly, even if there was a breach of contract, there is no evidence that the breach is what caused the applicant to incur expense.
17. Further, the applicant has provided no evidence showing that he paid money for the modifications he made to his kitchen, and no evidence of the amount. Absent such evidence, there is no basis for me to award money for the kitchen alterations.
18. The claim for "inconvenience" relates to delay. There is no evidence before me that establishes that the delay was the respondent's fault. Also, a claim for mere

inconvenience is generally not a basis for a monetary award. Accordingly I make no award for the applicant's inconvenience.

19. In addition to these points, the evidence does not establish that the respondent breached the contract. There is no evidence that the delay was its fault. Even if the delay meant the original fridge was no longer available, this matter was resolved when the parties agreed that the newer model fridge would be purchased and the respondent would not charge the full price for it. This agreement precludes the applicant from making any claim based on the original fridge being discontinued. Further, as indicated above, there is no evidence that the damage to the new fridge was the respondent's fault, and there is no evidence that the applicant could not have acquired the same fridge from another supplier.
20. With respect to the reimbursement, I agree with the applicant that the respondent failed to reimburse him the correct amount. The evidence demonstrates that the applicant paid the sum of \$2,700 plus tax and an additional \$1,000 inclusive of tax for the newer fridge. This works out to \$4,024 inclusive of tax. However the October 20, 2017 reimbursement was only \$3,464. The difference is \$560.
21. Accordingly, I find that the respondent must pay the applicant \$560.
22. The applicant is entitled to pre-judgment interest in the amount of \$6.43 under the *Court Order Interest Act* (COIA).
23. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In this case, the applicant was only partially successful. Accordingly, I find the respondent must reimburse the applicant for 50% of the tribunal fees, or \$87.50.

ORDERS

24. I order the respondent to pay the applicant a total of \$653.93 within 14 days of the date of this order, broken down as follows:

- a. \$560 for the fridge reimbursement;
 - b. \$6.43 in pre-judgment interest under the COIA; and
 - c. \$87.50 of tribunal fees.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Andrew D. Gay, Q.C., Tribunal Member