



Civil Resolution Tribunal

Date Issued: November 29, 2018

File: SC-2018-001513

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mckoffi v. Alloy Music Inc.*, 2018 BCCRT 781

BETWEEN:

Michael Mckoffi

APPLICANT

AND:

Alloy Music Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Michael Mckoffi, brought 4 audio speakers to the respondent, Alloy Music Inc., for repair. The applicant says the respondent substituted 2 of his

speakers with ones of lower quality. He seeks return of the original speakers, or alternatively payment of \$500. He also seeks a refund of the \$280 repair fee.

2. The respondent denies the applicant's claims, and says it repaired the original speakers as requested by the applicant.
3. The applicant is self-represented. The respondent is represented by Tim Boorman, a principal or employee.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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 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

8. The issue in this dispute is whether the respondent returned the applicant's original speakers, and if not, what is the appropriate remedy.

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.
10. The applicant accuses the respondent of theft. He says it kept his 2 Epi500 woofers (speakers) and replaced them with "phony substitutes", without informing him or obtaining his consent.
11. Mr. Boorman, on behalf of the respondent, denies this allegation. He says the applicant brought 4 speakers to them for re-foaming, which the respondent performed as set out in the written estimate. He says that after the repairs were performed, the applicant watched as the speakers were demonstrated in the shop, then took the speakers away. Mr. Boorman said the applicant called a week or 2 later and said he was having difficulty fitting the speakers into his cabinets. Mr. Boorman says that sometime later, the applicant came back to the shop and said the speakers were not the original ones he had left for repair. Mr. Boorman says the applicant left the speakers at the shop for a few months and then took them away. He says the applicant's theft allegation is implausible and untrue.
12. Based on the evidence before me, I find the applicant has not met the burden of proving that the speakers he picked up from the respondent were different from those he dropped off.

13. The applicant asserts that the respondent forged his signature on the work order form. However, I find this is not determinative of this dispute because it does not prove or disprove that the respondent returned different speakers to the applicant. For that reason, I make no finding about the alleged forgery.
14. The applicant asserts that he dropped off Epi500 speakers, but the respondent returned “plain and lesser ones.” He does not say the returned speakers were a different brand or model than the originals. Rather, he says his original speakers were unique and upgraded. He says they had aluminum handles, and he provided a hand drawing showing what these handles looked like. However, the applicant did not provide any original documentation, such as receipts, invoices, manuals, or photographs, to show that his original speakers were different or upgraded compared to those returned by the respondent. All of the photos provided in evidence by the applicant were of the speakers after their repair by the respondent. It is understandable that the applicant did not photograph his speakers prior to repair. However, without any evidence to corroborate the differences he asserts, I cannot conclude that the respondent substituted different speakers for the applicant’s.
15. The applicant says the speakers returned by the applicant have different materials, such as rough cones (rather than smooth), “fake black dye” on the cones, and cloth dust caps rather than paper. However, the applicant did not provide any evidence to establish what materials were used in his original speakers. He also did not provide any expert opinion evidence to corroborate his assertions about the different aspects of speaker construction and materials. The applicant provided a photo of speakers he says are the same, mounted in a cabinet, but this photo does not have sufficient detail to show that the pictured speakers are different from those returned to the applicant by the respondent.
16. The applicant says the screw holes in his original cabinets do not line up with the speakers returned by the respondent, which proves that they are different. However, there is no evidence before me to corroborate that the original speakers

were ever mounted in the cabinet in the photos. Also, the photos in evidence do not show the cabinet's screw holes in comparison to the mounting holes in the speaker.

17. The applicant says other photos he provided show that the respondent removed the date stickers from his original speakers and put them on the replacement speakers. He says the photos show that there were previous stickers on the back of the replacement speakers. Having looked carefully at these photos, I do not agree. I see no evidence of previous stickers. Also, given that the applicant purchased his original speakers used, it is possible that they had different stickers before he owned them.
18. For all these reasons, I find the applicant has not met the burden of proving that the respondent failed to return his original speakers. Also, even if I made this finding, I would not order the \$500 claimed by the applicant because he provided no evidence such as a receipt, invoice, or catalogue page showing similar speakers to establish the value of the speakers.
19. The applicant seeks a refund of the \$280 repair cost, based on the alleged theft by the respondent. Since I find the applicant has not established this allegation, I find he is not entitled to any refund. I dismiss the applicant's claims, and this dispute.
20. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

21. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member