



# Civil Resolution Tribunal

Date Issued: December 5, 2018

File: SC-2018-002475

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hani v. Nazarali Khajeali (Doing Business As True Smile Denture Clinic)*,  
2018 BCCRT 814

B E T W E E N :

Ataya Ragheb Hani

**APPLICANT**

A N D :

Nazarali Khajeali (Doing Business As True Smile Denture Clinic)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant, Ataya Ragheb Hani, says that in November 2017 the respondent, Nazarali Khajeali (Doing Business As True Smile Denture Clinic), made defective dentures that did not fit.
2. The applicant claims a refund of \$2,400 that he paid to the respondent. In addition, the applicant claims “the maximum amount” permitted for pain and suffering, because he cannot eat solid food and lost weight, due to the allegedly poor-fitting dentures. The respondent says the applicant signed off on the dentures during the “try-in” phase.
3. The parties are each self-represented.

## **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 provided inadequate or improper dentures for the applicant, and if so, 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 submissions below as necessary to explain my decision.
10. The applicant saw the respondent in late October 2017 to have upper and lower dentures made. He visited the clinic 3 different times for fittings. The applicant picked up the completed dentures on November 11, 2017. It is undisputed the applicant paid \$2,400 for the dentures.
11. The applicant submits that the dentures were “faulty from the day I first put them in my mouth”. The applicant saw the respondent 5 times to advise the dentures were made incorrectly and did not fit properly. The applicant says he has not been able to eat solid foods, developed painful sores in his gums, and in the result has lost a lot of weight. However, apart from his submission, the applicant’s only evidence is receipts for his deposit and final payment to the respondent.
12. The respondent says the applicant never mentioned any concerns during the “try in” phase, and had he done so, it would have been an “easy fix”. The respondent says

that once the denture is made, it is a costly and time consuming fix. The respondent says that it is for this reason that denturists ask their patient to indicate their satisfaction after the try-in. I accept this evidence, which is uncontradicted.

13. Here, the evidence shows the applicant on October 30, 2017 signed his chart indicating that he was happy with the denture try-in. The respondent says during the try-in phase, the applicant patient was able to see how the denture would look and feel and would be able to indicate any adjustments he wanted, before final processing. The respondent says that he explained to the applicant that any changes after final processing would be difficult and he would be charged. The respondent says that if any problems had been raised, he would have booked a second try-in. The respondent says the only concern the applicant had at the try-in phase was that the teeth felt sharp, which the respondent says is normal and is corrected once the denture is processed. I accept the respondent's evidence, which is consistent with the chart notes and was not specifically refuted by the applicant.
14. The respondent's chart indicates the dentures were inserted on November 7, 2017, and the applicant was fully satisfied.
15. The respondent's chart for the applicant shows he returned on November 9, 2017 complaining that his mouth was sore and the teeth were too sharp. The respondent checked his mouth and no redness or other signs of discomfort were apparent. The respondent made some minor adjustments, smoothed out the teeth, and suggested he wear the denture for a week to get used to it. On November 16, 2017, the applicant complained the teeth were now too dull. The respondent explained he had just smoothed out edges. The respondent says the applicant's last visit was on December 7, 2017, at which time the applicant's only complaint was that his wife wanted a different look.
16. The applicant provided a reply submission, but did not address his wanting a different appearance with the denture. The applicant also did not specifically address the respondent's evidence that he indicated satisfaction through the try-in phase. Again, I accept the respondent's evidence, which is consistent with his

contemporaneous chart notes. In particular, I accept that by December 7, 2017, the applicant had no complaint other than his wife did not like the look of the denture.

17. I find the applicant has not proved the respondent breached their contract or was negligent. I find the parties' agreement included changes for comfort and appearance during the try-in phase, and the applicant signed off that he was satisfied.
18. I also find that the applicant has not proved his claimed injuries. He has not provided any opinion evidence from another dentist nor has he provided any medical evidence about his weight loss and mouth sores, which I would expect.
19. Given my conclusions above, I dismiss the applicant's claims. As the applicant was unsuccessful in his claims, in accordance with the Act and the tribunal's rules I find the applicant is not entitled to reimbursement of tribunal fees or dispute-related expenses.
20. The respondent claims \$250 as a dispute-related expense, for his time spent on this dispute. The tribunal generally does not award parties their time spent dealing with the dispute, except in extraordinary cases, which is consistent with tribunal rule 132 that addresses reimbursement of legal fees. I find this is not an extraordinary case, so I dismiss the respondent's claim for \$250.

## **ORDERS**

21. I order the applicant's claims and this dispute are dismissed. The respondent's claim for \$250 in dispute-related expenses is also dismissed.

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Shelley Lopez, Vice Chair