



Civil Resolution Tribunal

Date Issued: January 3, 2019

File: SC-2018-004237

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moser v. Yee*, 2019 BCCRT 6

BETWEEN:

Marco Moser

APPLICANT

AND:

John Yee

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Marco Moser, bought a Microsoft Surface 3 Pro tablet (tablet) from the respondent, John Yee. The applicant says the tablet does not work. He seeks a refund of the \$550 purchase price, plus \$200 for lost time and productivity.

2. The respondent denies liability, and says he sold the used tablet without any warranty.
3. Both parties are 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 118 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 must refund the \$550 tablet purchase price, or pay the applicant \$200 for lost time and productivity.

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 parties agree the applicant bought the tablet on March 30, 2018, after seeing the respondent's advertisement on Craigslist. The applicant says he first tried to use the tablet the day after purchase, but it would not turn on. He says he took the tablet to the Microsoft store, where he was told it was defective and not worth repairing. He says the quote for repair was \$550.
11. Around April 4, 2018, the applicant texted the respondent to inform him that the tablet did not work, and to ask for a refund. His message said the tablet never worked after he left the respondent's house. The respondent texted that the tablet was used and the applicant had already checked it. The respondent told the applicant not to disturb him or he would call the police.
12. I accept the applicant's evidence that the tablet does not work, as his assertion is corroborated by video evidence showing the tablet's failure to respond to the power button, even though it was connected to a power source. The respondent suggests the tablet may have stopped working between March 30 when he sold it and April 4 when the applicant contacted him. However, I prefer the applicant's evidence on this point, as it is supported by the text messages in evidence. Also, the respondent did not provide any evidence to confirm that the tablet worked properly when he sold it. Finally, I place some weight on the fact that when the applicant contacted the respondent about the tablet's failure, the respondent did not offer to look at it to see if he could get it to work, but instead said the tablet was used and instructed the

applicant never to contact him. Based on all of this evidence, I find the tablet was defective when the applicant purchased it on March 30, 2018.

13. The respondent says the tablet was sold used with no warranty. However, section 18(c) of the *Sale of Goods Act* (SGA) applies to used goods sold privately. That section says that there is an implied condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale. In this case, the circumstances of the sale are that the respondent's Craigslist advertisement, which was provided in evidence, said the tablet was in "great condition". Thus, the tablet was not sold "as is", or for parts value. It was sold to be used as a computer. Because it does not turn on, I find it does not meet the implied warranty in section 18(c) of the SGA, and the applicant is therefore entitled to a refund of the \$550 purchase price. The applicant is also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from April 4, 2018.
14. I find the applicant is not obligated to return the tablet to the seller, as the evidence before me indicates that it has no monetary value.
15. The applicant requested \$200 to compensate him for lost time and productivity related to the defective tablet, plus \$20 in gas related to the purchase. I do not order these amounts. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. I see no reason to deviate from that practice here. Also, the applicant provided no specific accounting of his mileage.
16. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant also requested \$75 in dispute-related expenses. However, because the applicant provided no particulars or receipts to explain this request, I do not order reimbursement of dispute-related expenses.

ORDERS

17. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$680.63, broken down as follows:
 - a. \$550 as a refund for the tablet purchase
 - b. \$5.63 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees.
18. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.
19. 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.
20. 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.

Kate Campbell, Tribunal Member