



# Civil Resolution Tribunal

Date Issued: January 25, 2019

File: SC-2017-004220

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lennox v. 0714576 B.C. Ltd. dba Ashley Furniture Homestore*,  
2019 BCCRT 93

B E T W E E N :

Donna Lennox

**APPLICANT**

A N D :

0714576 B.C. Ltd. dba Ashley Furniture Homestore

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Graeme Nunn

### INTRODUCTION

1. The issue in this case is whether the applicant, Donna Lennox, is entitled to a refund for an electric bed she purchased from the respondent, 0714576 B.C. Ltd. dba Ashley Furniture Homestore. The applicant claims \$2,339.68 for the cost of the bed as well as her tribunal expenses.

2. After reviewing the provided evidence and consultation with the parties, I have amended the style of cause to show the correct respondent.
3. The applicant is self-represented. The respondent is represented by Jasvir Parmar, one of its principals.

## **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*. 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. 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.
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 make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision.
9. The issue in this decision is to what extent, if any, is the applicant entitled to a refund for the bed?

## **EVIDENCE AND ANALYSIS**

10. 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.
11. The applicant purchased an adjustable electric bed from the respondent. The bed consisted of an adjustable base and a separate mattress. The invoices provided by the respondent are dated November 19, 2015 and November 20, 2015. The applicant paid a total of \$2,339.68 for the base and mattress. The base was \$1,799.01 including applicable taxes.
12. Evidence about the exact timelines of the events leading to this dispute is unclear. It appears that the applicant accepted delivery of an adjustable base and mattress in December 2015. In or about October 2016 the respondent replaced the adjustable base at the applicant's request. According to the applicant's submissions she has been unable to use the bed since April 2017. According to the respondent's submission it did not have any notice the applicant was having problems until June 2017 when the applicant attended their premises claiming problems with the controller for the adjustable base. The respondent says that it found no problems with the controller during that meeting and did not hear from the applicant directly again. I accept that the applicant has continued to have problems with the adjustable base from April 2017, but I am unable to determine the extent of those problems nor why the applicant was unable to make use of the bed after that time.

13. The applicant is still in possession of the adjustable base. The respondent says that it has tried to make arrangements to inspect the base, but the applicant has refused. The applicant says that the respondent's representative did not attend at her residence at the time(s) agreed. I accept that there has been communication difficulties between the parties about access to the applicant's home for inspection of the adjustable base. I find that both parties are partially at fault for the failed attempts to inspect the adjustable base.
14. The applicant says she was misled by the respondent about the brand of bed she purchased. In particular, the applicant claims the respondent advised her she was purchasing a Temper-Pedic/Sealy bed, which was not the case. According to her submissions, the applicant contacted a representative for Temper-Pedic/Sealy to discuss the alleged problems with the adjustable base. The applicant was informed by the representative that the base was manufactured by Restwell Sleep Products and was not one of their products. The respondent has provided a warranty card from Restwell Sleep Products and claims the applicant was provided with documentation relating to the bed when it was delivered. I accept that the applicant purchased a Restwell bed from the respondent and ought to have known the brand she purchased when the bed was delivered. I find that the applicant was not misled by the respondent about the manufacturer of the bed.
15. Section 18 of the *Sale of Goods Act* says there is no implied warranty "as to the quality or fitness for any particular purpose of goods", except under specified circumstances. One such specified circumstance is that the goods will be "durable for a reasonable period of time" given the use to which they would normally be put "and to all the surrounding circumstances of the sale."
16. The *Sale of Goods Act* does not specify what length of time an adjustable mattress base must be reasonably durable. The Restwell Sleep Products warranty provided by the respondent has a 2-Year Motor Warranty on the adjustable base. I find that to be a reasonable amount of time in the circumstances. Since the adjustable base was replaced in October 2016, I find that the applicant was having problems with

the adjustable base during the period in which it should have been reasonably durable.

17. The applicant has requested a refund for both the adjustable base and the mattress in the amount of \$2,339.68. The respondent says that the adjustable base is the only item at issue and not the mattress. I agree with the respondent. The applicant has had use of the mattress since December 2015 and has not proven the mattress was defective.
18. I find that the applicant is entitled to a refund of \$1,799.01 for the adjustable base. Given this conclusion, I also find the applicant must return the adjustable base to the respondent.
19. Since the applicant has not returned the adjustable base, I find she is not entitled to pre-judgment interest under the *Court Order Interest Act*.
20. 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 have found that fault for this dispute lies with both parties and the applicant has only had partial success. I therefore decline to award the applicant her tribunal expenses.

## **ORDERS**

21. I order that:
  - a. Within 45 days of this decision, the respondent pay \$1,799.01 to the applicant as a refund for the adjustable base; and
  - b. The applicant must deliver the adjustable base, in its current condition, to the respondent upon receipt of the \$1,799.01 from the respondent.
22. 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.

23. 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.

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Graeme Nunn, Tribunal Member