



Civil Resolution Tribunal

Date Issued: March 13, 2019

File: SC-2018-006152

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shon v. Cascade Bath & Lighting Ltd.*, 2019 BCCRT 306

B E T W E E N :

Jenny Shon

APPLICANT

A N D :

Cascade Bath & Lighting Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about plumbing supplies.
2. The applicant, Jenny Shon, says she ordered 2 toilets from the respondent, Cascade Bath & Lighting Ltd., for her new home. The applicant says the respondent

delivered different toilets than those she ordered. The applicant seeks \$741.09 as a refund of the toilet purchase price plus the cost to remove and re-install new toilets.

3. The respondent says it delivered the toilets that were ordered. The respondent also says its customer was the applicant's contractor, who purchased the toilets, not the applicant. The respondent says the applicant did not complain about the toilets for 4 months after delivery, which was beyond their 14-day refund and return policy.
4. The applicant is self-represented. The respondent is represented by Gursahibdial Bhullar, an employee.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.
9. The applicant provided evidence and submissions about a shower hose she says the respondent failed to provide, then replaced with an unsatisfactory hose. Because the applicant has not asked for any remedy in relation to shower parts or the shower hose, I have not addressed this matter in my decision.

ISSUE

10. The issue in this dispute is whether the applicant is entitled to a refund for the toilets, plus the cost of removal and re-installation.

EVIDENCE AND ANALYSIS

11. 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.
12. For the following reasons, I find the applicant is not entitled to any refund for the toilets, or any removal or re-installation costs.
13. The applicant provided a photo of the toilet she says she saw in the respondent's showroom and selected, and another photo showing a toilet installed in her house. I accept that these 2 toilets are different. Most visibly, the first toilet has a flush lever on the side, while the second toilet has a flush button on top. Also, the applicant provided 2 different copies of the sales order document prepared by the respondent. Although these 2 sales orders have the same date, and the same item numbers for the toilets, they show 2 different prices. One sales order says each toilet cost \$225, and the other sales order says each toilet cost \$207. This is

consistent with the applicant's statement that when she went to the respondent's showroom to complain about the toilets in June 2018, an employee told her the original toilets had been discontinued.

14. However, I agree with the respondent that the applicant has not proven there was a contract between the parties. The respondent's sales orders, delivery slip, and invoice all name the applicant's plumbing contractor, A Plumbing, as the customer. While the applicant's address is listed as the delivery address, the billing address is that of A Plumbing.
15. According to the sales orders and delivery slips, the 2 toilets were part of a list of about 16 different types of plumbing fixtures and supplies purchased by A Plumbing on January 5, 2018, and delivered to the jobsite at the applicant's home in early February 2018. While the applicant provided a credit card receipt showing payment for the plumbing supply invoice on May 19, 2018, this does not prove that she was the original purchaser. Rather, I find that any potential remedy for ordering and installing incorrect toilets lies with A Plumbing, and not with the respondent.
16. The applicant says the respondent's delivery slip is "fake", and she has never seen it. I do not accept that assertion. Since it is addressed to A Plumbing, I find it is more reasonable in the circumstances that it was received by A Plumbing at the jobsite. I note that the applicant did not provide any evidence from A Plumbing.
17. The respondent says it cannot provide a refund for toilets that have already been installed, as it cannot re-sell them. I agree. Even if there was a contract between the parties, and the respondent delivered the wrong toilets, I would not order a refund or reinstallation costs because the applicant did not raise the matter with the respondent until June 2018, 4 months after the original purchase, and after the toilets were already installed.
18. The applicant says she did not know about the incorrect toilets until A Plumbing installed them on June 8, 2018, and she would have stopped the installation if she had known. Again, I find that this is a matter between the applicant and A Plumbing.

Since the toilets were delivered in February 2018, the applicant and A Plumbing had 4 months to inspect them. The applicant says she did not open the toilet boxes to protect against damage, but I find it was possible to open and then re-wrap them.

19. For these reasons, I find the applicant is not entitled to any refund for the toilets. I dismiss her claims.

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 her claim for reimbursement of tribunal fees and dispute-related expenses.

ORDER

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

Kate Campbell, Tribunal Member