



Civil Resolution Tribunal

Date Issued: March 28, 2019

File: SC-2018-05571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Farren v. Greg Hagel (dba Hagel's Upholstery)*, 2019 BCCRT 387

B E T W E E N :

Thomas Farren

APPLICANT

A N D :

Greg Hagel (Doing Business As Hagel's Upholstery)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a refund for a mattress. The applicant, Thomas Farren, says the mattress he ordered from the respondent was not as ordered and not at the price quoted. The applicant claims a refund of \$899.84. The respondent, Greg

Hagel (Doing Business As Hagel's Upholstery), denies liability. The parties are each self-represented.

JURISDICTION AND PROCEDURE

2. 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.
3. 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.
4. 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.
5. 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.

ISSUE

6. The issue in this dispute is whether the applicant is entitled to a \$889.84 refund for a mattress the respondent sold to him.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
8. The applicant says in early May 2018 he went to the respondent and said he wanted a mattress for his camper, size 57" x 72" x 5", and in particular, that he wanted 5" thick foam. The applicant says the store clerk said she would talk to her boss and get back to him with pricing.
9. The applicant says he returned to the applicant's store on May 17, 2018 and ordered the 5" thick mattress plus cover, which he says was supposed to be cotton quilted "Argile", but what he got was "just plain material". The applicant says the contract stated the mattress would be delivered by May 29, 2018 and his wife wrote a cheque for \$400.
10. After about 3 weeks, the respondent's clerk called the applicant and told him the mattress had arrived. The applicant says he picked it up and his wife wrote a cheque "for the balance". The applicant says the respondent changed the contract without phoning him to let him know the final cost. The applicant says if he had known at that time he would have refused.
11. The applicant says he was originally quoted \$477.37 for a 5" thick mattress, plus the cost of a mattress cover. The applicant says instead he received a mattress with 3" of foam and 2" of Latex with a poly cotton cover, at a price of \$899.84.
12. However, the applicant acknowledges he took the mattress and paid for it, even though he now says it was not what he wanted. In particular, he submits that put the

mattress in his camper and thought he and his wife “better try it out” before they continued on a trip to Washington. The applicant says he woke up both mornings with a back ache and his wife had trouble sleeping on it. Upon his return, the applicant says he told the respondent the mattress was too hard.

13. The applicant says there is nothing in the contract that says all sales are final. The applicant says he wants a full refund because he does not trust the respondent. As discussed below, the applicant however did not provide a copy of the contract. Nothing turns on this however, as it is undisputed the applicant chose to use the mattress, a personal item, and there is no general obligation on the respondent to accept its return and provide a refund.
14. Further, apart from their submissions, neither party provided any evidence to the tribunal, despite the opportunity to do so. Tribunal staff tell parties to provide all relevant evidence. I note the respondent asked for help in submitting evidence through the tribunal’s online system, and that inquiry was not answered due to an internal tribunal error. Nothing turns on that given the applicant bears the burden of proof in this dispute. Notably, the applicant made no request for help with submitting evidence and did not provide any evidence despite saying he had the original quote and the final invoice.
15. However, given my conclusions below, I find having the original quote and the final invoice before me would make no difference.
16. The respondent says he “up sold” the applicant and his wife to a higher end latex mattress (rather than just solid foam), which he says they agreed to buy. As noted, the applicant paid the deposit, picked up the mattress and paid the final bill. The respondent says the mattress’ full description was set out in the invoice. The respondent also details how he helped the applicant put the mattress in his truck and showed him which side was latex. In his reply submission the applicant did not dispute this evidence, and I accept it. On balance, I find the applicant has not proved the mattress he bought was not what he ultimately ordered.

17. In particular, in the applicant's reply submission, he simply refers to the "original" May 17, 2018 "contract", which I infer is the original quote for the mattress the applicant initially ordered. However, the applicant does not address the respondent's specific submission that the applicant agreed to instead buy a higher end latex mattress. The fact that the applicant took the mattress and had the discussion about its latex side, and the fact that the applicant's wife paid for the more expensive mattress, supports a conclusion that the applicant agreed to buy a higher end mattress. The fact that the applicant did not ultimately find that mattress comfortable does not mean he did not get what he agreed to buy. Again, the applicant bears the burden of proof and I find he has not met the burden that the respondent provided him something other than what he ordered.
18. As the applicant was unsuccessful in his claim, I find it is not entitled to reimbursement of tribunal fees.

ORDER

19. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair