



Civil Resolution Tribunal

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File: SC-2018-007923

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chaudhry v. 1044960 BC Ltd. DBA Pearls Furniture and Appliances*,
2019 BCCRT 422

B E T W E E N :

Muhammad Chaudhry

APPLICANT

A N D :

1044960 BC Ltd. DBA Pearls Furniture and Appliances

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a furniture purchase.

2. The applicant, Muhammad Chaudhry, bought a bed and 2 nightstands from the respondent, 1044960 BC Ltd. DBA Pearls Furniture and Appliances. The applicant says the bed's headboard was bent when he received it, and so were each of the 2 replacement headboards provided by the respondent. The applicant seeks a refund of the \$1,753.92 he paid for the headboard and nightstands, plus \$1,096.08 for stress caused by the respondent's delay in solving the problem.
3. The applicant is self-represented. The respondent is represented by Rajesh Ghai, whom I infer is a principal. When the applicant started this proceeding he named the respondent as Rajesh Ghai (Doing Business As Pearls Furniture and Appliances), but the parties later agreed that the proper business name is 1044960 BC Ltd. DBA Pearls Furniture and Appliances. I have amended the style of cause accordingly.
4. Mr. Ghai, on behalf of the respondent, denies the applicant's claims. The respondent says the headboards were not damaged, and that their curved appearance was part of their design. The respondent also says that even if the headboard was damaged, the applicant is not entitled to a refund for the delivery fees and the other furniture he bought. The respondent also says the sale was final, so the applicant is not entitled to a refund in any event.

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.

ISSUE

9. The issue in this dispute is whether the headboard purchased by the applicant was damaged, and if so, what remedies are appropriate.

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 sales invoice shows that on November 15, 2017, the applicant bought a queen-size bedframe and 2 nightstands from the respondent. The total price was \$1,753.92, including the 3 items, delivery, and taxes.
12. I find the applicant has not met the burden of proving that the original bedframe he received was damaged or defective. The applicant provided photos showing that 1 of the 3 headboards he received had a dent on the corner, which is clearly due to

shipping damage. However, I find the applicant has not proved that the other 2 headboards were both damaged.

13. The photos showing the dented corner do not show enough of the headboard to be able to tell if it is curved, and what it looks like overall. Similarly, the applicant provided a photo of the headboard installed under a window, but the angle of the photo does not show the entire headboard, such as the entire front side. Based on that single photo, I cannot tell if the headboard is “dented”, as claimed by the applicant. I cannot see the overall appearance of the headboard, and I cannot tell if its design reasonably includes a curve, as asserted by the respondent. The applicant also did not provide a copy of a website or catalogue page, showing what the headboard is supposed to look like. Again, I note the applicant bears the burden of proving his claims.
14. The applicant relies on an audio recording of a telephone call with an employee of the headboard’s manufacturer. He says that recording proves the headboard is supposed to be straight. I do not agree. The employee refers to photos provided by the applicant, but I do not know what photos those are. I find the employee is primarily discussing the dent on the headboard’s corner, which she describes as freight damage. Without clear photos showing the headboard’s shape, I am not persuaded that the telephone recording establishes that the headboard is defective.
15. I also place some weight on the statement of SS, who is another customer of the respondent’s who bought the same bed. SS wrote that his headboard has a slight curve on the back, which makes it look better than a straight back. I place limited weight on SS’s statement, as there are no photos of his bed in evidence, and the nature of his relationship with the respondent is unclear. However, I place significant weight on the fact that the applicant says all 3 of the headboards he received from the respondent were “bent”. This fact strongly supports the conclusion that the bend is part of the headboard’s design, rather than a defect. I find it is unlikely that freight damage would cause exactly the same bend in each of 3 headboards.

16. For all of these reasons, I find the applicant has not proven that all 3 headboards he received were damaged or defective. I therefore dismiss his claims, and this dispute.
17. 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 the claim for reimbursement of tribunal fees and dispute-related expenses. I would not have ordered his claimed \$102 for costs related to service of the Dispute Notice, since he provided no receipts or particulars to support this claim. The respondent did not pay any tribunal fees.
18. The respondent claims damages in the amount of 10% of the applicant's total claim, as a penalty for a meritless claim under section 20(5) of the *Small Claims Rules*.
19. The Provincial Court's *Small Claims Rules* do not apply to the tribunal, and there is no tribunal rule that would entitle the respondent to damages on this basis. Also, while the applicant's claims were unsuccessful, I find they do not meet the test of "no reasonable basis for success", as contemplated in the rule cited by the respondent. For these reasons, I do not order the applicant to pay damages.

ORDER

20. I dismiss the parties' claims and this dispute.

Kate Campbell, Tribunal Member