Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-007827

Type: Small Claims

Civil Resolution Tribunal

Indexed as*: Gudjonson v. All-Can Express Ltd.,* 2019 BCCRT 576

B E T W E E N :

Teena Gudjonson

APPLICANT

A N D :

All-Can Express Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a damaged refrigeration unit (fridge). The applicant, Teena Gudjonson, ordered the fridge, and hired ACE courier services, operated by the respondent All-Can Express Ltd., to deliver it. The applicant says the respondent damaged the fridge during delivery. The applicant claims $1,800, being the alleged decrease in value and void warranty, plus $500 for her time spent on this matter.

2. The respondent denies liability, and says in any event its waybill limits the respondent's liability for damaged freight, noting the applicant did not buy additional insurance.

3. The applicant is self-represented. The respondent is represented by Mark Wayliuk, who I infer is an employee or principal. For the reasons that follow, I dismiss the applicant's claims.

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 9.3(2), 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

8. The issue is whether the respondent damaged the applicant's fridge during its delivery services, and if so, what is the appropriate remedy.

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 referenced the evidence and submissions as necessary to give context to my decision.

10. As referenced above, the applicant bought the fridge and hired the respondent to ship it from Kamloops to Salmon Arm. It is uncontested there was some delay in delivery and the respondent does not deny the fridge was loaded and unloaded on 4 different trucks.

11. The applicant says the fridge arrived with damaged packaging in several areas and completely punctured around the compressor parts. She says the driver indicated the fridge had been on 4 different trucks. When she unwrapped the package, she found the fridge unit itself had several dents and damage. She says the respondent refused to accept her claim, despite providing photos to the fridge supplier who she says indicated the fridge did not leave his store damaged. There is no statement from the fridge supplier in evidence.

12. Based on the evidence before me, including the applicant's photos of the packaging and of the dented unpacked fridge, and her notation of damage on the waybill at the time of delivery, I find the fridge was delivered damaged. To the extent the respondent suggests it, I do not accept that the applicant tried to install the fridge or

damaged it in any way. However, the fact that it arrived damaged does not mean the respondent is responsible for that damage.

13. It is uncontested that the respondent is only a freight delivery business and that the shipper is responsible for preparing the shipment. The applicant says if the fridge was not packed to the respondent's satisfaction, they should have said so rather continuing to load and unload the fridge and ultimately deliver it damaged. The applicant says the seller said the respondent's driver never expressed any concern about the fridge's packaging, and that all their large units are shipped in the same manner. Yet, again, there is no statement in evidence from the seller. Based on the photos, I find the Styrofoam packaging appears to be relatively thin and there is no stiff wood or metal bracing to prevent its perforation.

14. On balance, I find the applicant has not proved the respondent is responsible for the fridge damage, rather than it resulting from improper packaging by the fridge's seller.

15. Even if the applicant had established the respondent improperly handled the fridge and damaged it, I would not allow the claims as presented. The respondent's waybill limited liability to $100, in the absence of insurance. It is undisputed there was no insurance purchased for the fridge's delivery. According to the respondent's September 10, 2018 waybill, the applicant signed for the fridge on September 12, noting "dent on back" of the packaging. The waybill shows the fridge and packaging weighted "450", which I infer refers to pounds. The consignee is "Little Mountain Field House", which I infer is an organization run by the applicant. The back of the waybill slip has 4 "terms and conditions of transport". The second has a bolded title, "Limit of Liability – Abbreviated Detail", and it states, "free maximum liability covering this shipment - $100.00". It states clearly that shipments with a declared value over a certain amount (there was no declared value for the fridge) or items worth between $100 and $5,000 are subject to an insurance surcharge which must be agreed to by the shipper or consignee at the time the shipment is made. At most, the applicant's claims would be limited to $100.

16. Next, even if there was no limitation of liability I find the applicant has not proved the amount of damages claimed. The applicant says her claimed $1,800 is reasonable because of the ever-present gurgling noise ("possibly a compressor or other mechanical issues") plus her "extensive time to try and resolve this". Yet, the applicant has not provided any explanation of how she arrived at this figure or how the gurgling noise has impacted the fridge's function. The applicant provided no evidence of the fridge's purchase price or replacement cost, such as a quote or invoice. She provided no copy of the fridge's warranty, which she says is voided. For these reasons, I would dismiss the applicant's claims.

17. The applicant also claims $500 for the time spent on this dispute. 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. For that reason, quite apart from the fact that the applicant was otherwise unsuccessful in her claims, I do not order compensation for time spent on the dispute.

18. The applicant was unsuccessful. In accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees.

ORDER

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

Shelley Lopez, Vice Chair