



Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-008024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thind v. Vision Electronics Limited Partnership (Doing Business As Vision Electronics)*, 2019 BCCRT 588

B E T W E E N :

Prabhjit Kaur Thind

APPLICANT

A N D :

Visions Electronics Limited Partnership (Doing Business As Vision Electronics)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a television. The applicant, Prabhjit Kaur Thind, purchased a television from the respondent, Vision Electronics Limited Partnership (Doing Business As Vision Electronics), in July of 2017. The applicant reported a display

problem with the television and says that the respondent declined to replace the unit or refund the purchase price. The applicant seeks an order that the respondent refund the \$1,660.95 spent on the unit or exchange the television for a new unit. The respondent denies that it is responsible for the remedy requested by the applicant.

2. The applicant is self-represented. The respondent is represented by an employee, Jimmy Hong.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Under tribunal rule 9.3(2), 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.

ISSUE

7. The issue in this dispute is whether the respondent should refund \$1,660.95 to the applicant or exchange the television.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The applicant purchased a television from the applicant in July of 2017. The receipt signed by the applicant states “product received in good order” and that “any product with hidden damage must be claimed within 24 hours of receipt”.
10. At some point later, the applicant noticed that the display would change between multi-coloured stripes and a black screen. The applicant contacted the respondent and was instructed to get in touch with the manufacturer, as the television was within the manufacturer’s 1-year warranty term.
11. The applicant sent a picture of the screen to the manufacturer. Images of the television provided as evidence in this dispute appear to show scratches or other inconsistencies in the surface on the bottom left-hand corner of the screen when both the stripes and the black screen are displayed. It is not clear whether the images provided in evidence are the same images that were sent to the manufacturer.
12. In a February 13, 2018 email message, the manufacturer stated that the warranty covered technical issues only. The manufacturer decided that “after closely

reviewing the pictures this case is considered as physical damage and unfortunately physical damage is not covered under the Manufacturer's warranty". The manufacturer recommended that the applicant contact its authorized repair centre for information about repair costs.

13. The applicant says that she disagrees with the respondent's decision about her television as the television does not have a single scratch or mark on it. The applicant states that the decision about her television was made on the basis of a single photograph without having the benefit of an inspection. She says the respondent failed to ensure that she did not receive a defective product, and points out that she purchased an extended warranty to provide peace of mind in the event of any defect in the television but nothing was done to remedy the situation. The applicant says the respondent is not in compliance with the *Sale of Goods Act* (SGA) and the *Business Practices and Consumer Protection Act* (BPCPA).
14. The respondent says it did not make any decisions about the applicant's television, as the determination about warranty coverage was made by the manufacturer. The respondent states that it has a 24-hour window to claim any concealed damage, but that this claim occurred well outside of that time frame and the applicant confirmed to it that the television was working for several months before the problem occurred. The respondent explains that the extended warranty it sold the applicant simply extends the warranty and does not cover physical damage.
15. I find that the implied warranty provisions in section 18 of the SGA apply to the transaction between the applicant and the respondent, a company in the business of selling electronic equipment. This section requires that each item is in the condition described and is of saleable quality and reasonably fit for its purpose. Section 18(c) of the SGA states that there is an implied condition that the goods will be durable for a "reasonable period of time", taking into account how the goods normally would be used and the circumstances of the sale.
16. In this case, the television purchased by the applicant apparently functioned for a period of time before developing the problem. I find that this evidence supports the

conclusion that the television sold to the applicant met the implied warranty provisions in the SGA. Further, the evidence does not establish that the respondent engaged in any unfair practices with respect to the sale of the television as contemplated by the BPCPA. Even if I had found the presence of such practices, I find that the tribunal does not have the jurisdiction to address a remedy.

17. The decision not to provide coverage for the applicant's television under the manufacturer's warranty was made not by the respondent, but by the manufacturer. The manufacturer is not a party to this dispute and I cannot make any orders against a non-party.
18. The applicant says that she purchased an extended warranty from the respondent. Both the applicant and the respondent provided copies of the receipts for the applicant's television. Neither copy explicitly shows a charge for the respondent's Extended Service Plan (ESP), but both documents discuss the terms and limitations of the ESP coverage.
19. The ESP's coverage period is described as beginning on the date of purchase. According to the terms of the ESP, if the television failed to perform during the coverage period, the respondent would repair or replace the product with its current equivalent. The plan covers only defects in material and workmanship and does not cover wear and tear, accident, abuse, or misuse.
20. Based on the photographic evidence, the respondent says that the manufacturer's denial of coverage under the warranty "would appear to be the correct decision". As discussed above, the images in evidence do appear to show an irregularity in the lower left area of the screen. Again, the fact that the applicant's television functioned for a period of time before developing problems is more consistent with physical damage than her being sold a faulty unit. The applicant has not provided evidence from a technician or other expert to show that the problems with her unit are due to a pre-existing or manufacturing defect in the television.

21. I find that the applicant has not established that there was a defect in material or workmanship such that she would be entitled to coverage under the ESP or a refund of the purchase price of the television. As the applicant has not proved that the respondent is responsible for the problems with her television, I dismiss the applicant's claims.

22. 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. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees.

ORDER

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

Lynn Scrivener, Tribunal Member