



Civil Resolution Tribunal

Date Issued: July 18, 2019

File: SC-2018-005044

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Semeniuk v. Matthew Lawless, dba Safe Home Fireplace et al*, 2019
BCCRT 864

B E T W E E N :

Mark Semeniuk

APPLICANT

A N D :

Matthew Lawless, Doing Business As Safe Home Fireplace and
SHERWOOD INDUSTRIES LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about gas fireplaces. The applicant, Mark Semeniuk, says that he bought 2 gas fireplaces from the respondents, Matthew Lawless, doing business as Safe Home Fireplace, and SHERWOOD INDUSTRIES LTD. (Sherwood). The

applicant claims that 1 fireplace did not work at all and the other operates at a sub-optimal level. He wants the respondents to pay him \$5,000 and replace the fireplace that does not operate correctly. The respondents disagree with the applicant's claims.

2. The applicant and Mr. Lawless are self-represented. Sherwood is represented by an employee.

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.

ISSUES

7. The issues in this dispute are:
 - a. whether the respondents are responsible for the \$5,000 in damages claimed by the applicant; and
 - b. whether the respondents should be ordered to repair or replace the fireplace that remains in the applicant's home.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have 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 made an online purchase from Mr. Lawless of 2 fireplaces manufactured by Sherwood. Mr. Lawless shipped the fireplaces to the applicant, whose home was under construction.
10. The applicant noticed some issues with the fireplaces' function after they were installed. In late November of 2017, he began email and telephone correspondence with the respondents about the problems and was dissatisfied with the timeliness and substance of the responses. The applicant's own contractors performed testing and troubleshooting (some of which was at the respondents' direction) in an attempt to address the problems. These efforts proved unsuccessful.
11. The applicant returned 1 fireplace to Mr. Lawless for a refund of the purchase price. The applicant purchased a new fireplace from another dealer at an increased cost of \$650. The new fireplace functioned properly after installation. The 2nd fireplace

remains installed in the home, although the applicant says it does not operate as it should.

12. The applicant says the completion of his home was delayed and he incurred costs as a result of the defective fireplace and very poor and delayed troubleshooting by Sherwood and Mr. Lawless. He says they unnecessarily instructed his contactors to run the same tests over and over again. In addition to the \$650 cost difference between the refund amount and the new fireplace, the respondent says he spent money on shipping costs or labour costs associated with troubleshooting for which he was not reimbursed. The applicant asks for reimbursement of \$5,000 in these and other costs (including rent for another residence) he says he incurred as a result of the faulty fireplace and the respondents' conduct. The applicant also says that the 2nd fireplace does not function properly, and seeks an order that the respondents repair or replace it.
13. Mr. Lawless says that there was nothing faulty with the fireplace but rather there was a problem with venting as a result of technician error during installation, which was performed by someone else. He says that he recreated the venting scenario at his workplace, and provided video footage to support that the returned fireplace worked "flawlessly". Mr. Lawless says he re-sold the same fireplace with no problems. He says that, in an image of the 2nd fireplace, he "noticed lack of embers and quite obvious lack of vent restriction & venturi error position [sic] by the flame pattern of the second fireplace claimed to be working subpar". Although not explicitly stated, I infer that his position is that the 2nd fireplace also has installation issues rather than mechanical faults in the unit itself.
14. Sherwood says that the fireplace unit was installed by a third party outside its network as opposed to a factory-trained installer. Further, it says that the manual states that installation and service should be performed by a factory-trained installer only. Sherwood denies that it created delays in terms of responding to the applicant or in attempts to remedy the problem. It says that, when troubleshooting, it is not appropriate simply to pick up where the previous technician left off, and it is

necessary to start again and work through each step. Sherwood says that it has concerns about the manner in which the fireplaces were installed and vented, particularly as the returned unit was tested, and no issues were found.

15. Sherwood's warranty covers defects in materials, but excludes coverage for improper installation, as well as for "inconvenience expenses and materials" or "incidental or consequential damages". In addition, I find that the implied warranty provisions in section 18 of the *Sale of Goods Act* (SGA) apply in this situation. This section requires that each item is in the condition described and is of saleable quality and reasonably fit for its purpose.
16. In order for the applicant to be successful, I find he must establish that the fireplaces manufactured and sold by the respondents are faulty. The thrust of the applicant's argument is that the fireplaces must have been defective as they did not function as he expected. However, this fact does not, by itself, establish that the problem was with the fireplace units themselves. I agree that the method of installation is a relevant factor to consider, and that the applicant has not shown otherwise. My further reasons follow.
17. The applicant's submissions include a letter from the applicant's general contractor who stated that the fireplace issue delayed the completion of the home by approximately 2 months. The applicant also provided a letter from the installing gasfitter, who recounted his frustrating experience in installing the fireplaces and receiving repetitive instructions from the manufacturer while attempting to remedy the problem. He stated that the fireplace that remains in the home has a weak flame which, intermittently only extended half-way across the fireplace, while the fireplace that was removed "would not maintain a flame at all". The gasfitter stated that "the installation and venting configuration were done correctly, meaning the gas fireplace itself almost certainly was defective".
18. Both respondents suggested that the evidence was indicative of installation problems. As noted above, the respondents did not have any involvement in, or responsibility for, the installation of the fireplaces, which was arranged by the

applicant. The applicant's gasfitter did not address the fact that the fireplace that was removed functioned properly when tested by Mr. Lawless. Further, the gasfitter did not comment on Mr. Lawless' statement that a photo of the flame in the remaining (and apparently still functioning) fireplace showed indicia of installation issues. There is no other evidence from a gasfitter or other professional that offers a differing view of the venting, installation, or status of the fireplace units.

19. I am not satisfied that the evidence before me establishes that the reported problems with the fireplaces in the applicant's home were the result of defects in the units rather than installation or some other factor. Similarly, I find that the evidence does not support the conclusion that the fireplace units were not of saleable quality and reasonably fit for their purpose.
20. I acknowledge the applicant's report of a frustrating experience with the fireplaces. However, I find that he has not proven that the source of the problems were mechanical defects for which the respondents are responsible. The evidence before me does not show that the respondents unreasonably addressed the problems such that the applicant would be entitled to damages as a result of the alleged delay. I dismiss the applicant's claims for damages.
21. 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 unsuccessful, I dismiss his claim for reimbursement of tribunal fees and dispute-related expenses.

ORDER

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

Lynn Scrivener, Tribunal Member

