



Civil Resolution Tribunal

Date Issued: July 18, 2019

File: SC-2017-004606

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Semrick v. Little Red Hen Hatchery*, 2019 BCCRT 862

B E T W E E N :

Angela Semrick

APPLICANT

A N D :

Little Red Hen Hatchery

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. In April 2017 the applicant, Angela Semrick, bought what she thought were 75 laying hen chicks from the respondent, Little Red Hen Hatchery. The applicant says that as the chicks matured, she learned that 15 of them were roosters, and of no use to her.

2. The applicant wants the respondent to reimburse the \$132.35 purchase price and transport costs of the roosters, \$169.41 for the cost of raising them, and \$150 for the future cost of disposing of them, for a total of \$451.76.
3. The respondent says the chicks the applicant bought were “vent sexed” and their sex was not guaranteed in accordance with its policy, and therefore it does not owe the applicant anything.
4. The applicant is self-represented and the respondent is represented by an employee or principal.

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*. 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. Some of the evidence in this dispute amounts to a “she said, they said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s

process and 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 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

9. The issue in this dispute is whether the parties' contract precluded inclusion of any roosters, and whether the applicant is entitled to reimbursement of her expenses for the roosters.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claims on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. On March 16, 2017, the applicant ordered 75 vaccinated laying hen chicks of various breeds from the respondent, to be picked up in April 2017. On March 21, 2017, the respondent emailed confirmation of the applicant's order for "female vaccinated chicks."
13. On April 22, 2017 the applicant picked up the chicks from the respondent. It is undisputed that the respondent did not have enough chicks of one of the breeds the

applicant had ordered, so instead it gave her 3 “mixed run silkie” chicks for the price of 2, because the respondent said there was a possibility that those chicks could be roosters, and it knew the applicant only wanted hens. It is undisputed that the applicant paid the respondent \$7 per chick for 75 chicks, plus the 1 free silkie chick, for a total of \$525.

14. The respondent says at the time of purchase it notified the applicant that the chicks were “vent sexed” by professional sexers, and that there was a 3 to 5 % chance the chicks would be males. The respondent submitted the policy posted on its website, which states that all sales are final, the respondent is not responsible for eggs or chicks that leave its care, and “accuracy with the vent sexed chicks are 95 – 98%.”
15. The applicant says that before she bought the chicks the respondent never notified her of the possibility that any of them could be male, aside from the 3 silkies. She says she does not recall any discussion with the respondent about the process of vent sexing, or about the respondent’s policy. She says she does not recall seeing the disclaimer on the respondent’s website about vent sexed chicks despite reviewing the website several times before making the purchase, and she suggests that the respondent updated its website policy after she bought the chicks.
16. On balance, I prefer the applicant’s evidence on this point. I find there is no indication in any of the documentation in evidence up to April 22, 2017 that the respondent informed the applicant the chicks she ordered were vent sexed or that there was some percentage chance that some of the chicks could be male. I also find it unlikely the respondent would have given the applicant a free silkie chick on the basis that it could not guarantee the sex of the 3 silkie chicks if the respondent could not guarantee the sex of any of the chicks. For these reasons, I find the respondent did not notify the applicant that the chicks she bought were vent sexed, and therefore I find the applicant was unaware of the possibility some of the chicks could be male.

17. On August 22, 2017 the applicant notified the respondent that some of the chicks were in fact roosters, and that some of them had not yet matured enough for her to verify their sex, so she was unable to determine the exact number of roosters.
18. The applicant submitted a statement from C.B. who says she spent 6 weeks on the applicant's farm from May 10 to June 26, 2017 and fed and took care of the chicks during that time. C.B. says she returned to the applicant's farm from August 23 to September 5, 2017, and says the same chicks had grown, and many of them were roosters. She says she is 100 percent sure the roosters were the same animals she took care of earlier that spring.
19. The applicant also submitted a statement from I.B., who worked on the applicant's farm beginning on July 2, 2017. I.B. says she saw the chicks when she first started, which were 2.5 months old at the time, and they were raised separately from the applicant's older laying chickens. I.B. says that as the chicks matured she learned that some of them were in fact roosters.
20. The applicant says she sold 10 of the chicks to her daughter. She submitted a statement from her daughter which states that 1 of those 10 chicks was a rooster.
21. On August 24, 2017, the respondent told the applicant by email that she had purchased the chicks from Ideal Poultry and Murray McMurray, and that there was a 95 to 98 percent chance of the chicks being female.
22. On August 25, 2017, the applicant told the respondent that at least 17 of the chicks she purchased in April were roosters, which included 1 "Rhode Island red," 3 "black australap," 2 "buff orpington," 6 "lace wynadotte," 2 "Americana," and 3 "cuckoo marans." She attached to the email 5 photographs of some of the roosters which she says were examples.
23. On August 30, 2017 the respondent sent the applicant an email with its invoice from Ideal Poultry Breeding Farms, Inc., which it says supplied it with the chicks the applicant bought. The invoice does not indicate the sex of the breeds of chicks the

applicants bought. The respondent's email states, "as you can see, we did not receive any males."

24. While the applicant originally estimated 17 of the chicks were roosters, in December 2017 on closer examination she determined she had 15 roosters, and she revised her claim accordingly.
25. Overall, I prefer the applicant's evidence. I find her email of August 25, 2017 to be specific about the precise number of roosters of each breed. Although the witness statements do not specify the exact number of roosters, I find they generally support the applicant's version of events. I also find it unlikely that the applicant would later reduce the amount of her claim if she were being untruthful. I find nothing turns on the fact that the applicant sent the respondent only 5 representative photos of the roosters. On balance, I accept the applicant's evidence that she received 15 male chicks from the respondent.
26. On the other hand, I find the respondent's evidence to be internally inconsistent. The respondent primarily relies on the disclaimer on its website stating the sex of the vent sexed chicks is only 95 - 98% accurate, of which I have found the applicant was not notified. However, in its correspondence to the applicant on August 30, 2017 the respondent states that it did not receive any male chicks from its suppliers, which is not only unclear from the invoice, but which contradicts the respondent's primary position that it could not guarantee the sex of the chicks. I also note that having found 15 of the applicant's 75 chicks are male, this is an inaccuracy rate of 20% which is well above the 3 - 5% inaccuracy rate the respondent relies on.
27. The evidence also shows the respondent provided other explanations to the applicant for the roosters which I find to contradict its primary explanation. It suggested that one of its staff may have mixed up the chicks before the applicant purchased them, or that the roosters in the applicant's possession were not purchased from the respondent. However, I find the applicant's numerous witness statements support the applicant's claims that the roosters in her possession were the ones she purchased from the respondent. Overall, I do not find the respondent's

multiple explanations for the roosters compelling, rather I find them to be evasive and suggest a lack of credibility.

28. For all of these reasons, I find the applicant has established that the respondent misrepresented the sex of the 15 roosters to the applicant. I find the applicant is entitled to a refund of the purchase price of the 15 roosters for a total of \$105. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act*, calculated from April 22, 2017, which is the day she bought the roosters.
29. The applicant has not provided any evidence to support her claims for the cost of transporting, raising or feeding the roosters, or the future cost of their disposal, despite that such evidence should be readily available. Therefore, I find the applicant has not established these claims and I dismiss them.
30. 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. Since the applicant was only partially successful, I find she is entitled to reimbursement of half her tribunal fees in the amount of \$62.50. She has not claimed any dispute-related expenses.

ORDERS

31. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$170.52, broken down as follows:
 - a. \$105 as a refund of the purchase price of the roosters,
 - b. \$3.02 in pre-judgment interest under the Court Order Interest Act, and
 - c. \$62.50 in tribunal fees.
32. The applicant is entitled to post-judgment interest, as applicable.

33. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
34. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member