



Civil Resolution Tribunal

Date Issued: August 15, 2019

File: SC-2019-001737

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West Coast Appliance Centre 2014 Ltd. v. Toncev*, 2019 BCCRT 972

B E T W E E N :

WEST COAST APPLIANCE CENTRE 2014 LTD.

APPLICANT

A N D :

LENA TONCEV

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about payment for a stove.
2. The applicant West Coast Appliance Centre 2014 Ltd. says the respondent Lena Toncev failed to pay for the range/stove (appliance) she purchased. The respondent initially paid by credit card, but later had the purchase price refunded by the credit

card company. The applicant claims \$1,340.01 for the appliance and delivery charges, plus contractual interest.

3. The respondent says the appliance's oven door does not close completely, so it does not cook food properly. In submissions, the respondent says she will pay for the appliance once she gets a working replacement.
4. The applicant is represented by principal or employee Fred Aram. The respondent is self-represented.

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* (CRTA) 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. 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.
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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.
9. The respondent requested that her name be redacted or anonymized. I dismiss this request because the respondent provided no explanation and no evidence of any reason why her privacy interests about the appliance purchase outweigh the public interest in publication of these reasons in full form.

ISSUE

10. The issue in this dispute is whether the respondent is liable for pay for the appliance, delivery fee and interest and, if so, how much.

EVIDENCE AND ANALYSIS

11. 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.
12. The invoice shows that the respondent purchased the appliance from the applicant on June 3, 2018. The appliance is a Samsung electric range with 5 burners and a true convection oven. The invoice lists a total charge of \$1,340.01 broken down as:
- a. \$1,098.00 for the stove/oven,
 - b. \$80.00 for delivery,
 - c. \$25.00 for removal of old appliance, and
 - d. \$137.01 in GST and PST.
13. It is undisputed, and I find, that respondent paid the balance owing, by credit card, on June 3, 2018.

14. The invoice contains a written condition that the appliance cannot be returned after delivery unless the manufacturer authorizes the return.
15. The invoice states that Samsung warranties the appliance against manufacturing defects for one year from the date of purchase. The invoice also refers to implied warranties of merchantability and fitness for a particular purpose being limited to one year or the shortest period allowed by law.
16. On June 9, 2018, the stove was delivered to the respondent's home. The respondent says the stove did not have plastic covering on it, suggesting it was not new. The applicant says the respondent received "White Glove Delivery" service, which involves the packaging being removed prior to transport. Given the \$80 charge for delivery, I find that the lack of plastic covering on the appliance reflects the delivery service. It does not prove that the appliance was used.
17. The respondent also says that the stove "looked crooked". Based on the respondent's evidence, I find that the applicant sent an employee back and adjusted the stove's feet so that it was level.
18. The respondent says the stove did not work properly. She says her food came out "desiccated" but not "done". The respondent says she spoke with the applicant's employee, P, who told her that the problem might be a door damaged during transport.
19. On July 19, 2018, the applicant sent a service technician to the respondent's home to investigate her complaint that the door did not shut properly. The service record shows that the technician replaced the stove's hinges and receivers, then tested the door and found it to be functioning properly. I find that this documentary evidence prepared at the time the appliance was tested to be an accurate record of what happened.
20. The respondent says the technician visit did not fix the problem with the appliance.

21. The service record shows that the respondent then complained about the way the stove looked. The technician advised her that the door's appearance is a design issue and she would have to pursue that with Samsung directly, as they hold the warranty.
22. The applicant submitted the \$259.77 service visit cost to Samsung.
23. The respondent says she offered to return the stove, but the applicant refused. She says she requested a loaner stove and the applicant refused. The applicant says it assessed the appliance was working normally, so there was no need for a loaner.
24. Photographs of the stove filed in evidence show the oven door slightly ajar. However, based on these photographs I find it is not possible to tell if the door can close properly.
25. The applicant provided photographs of a Samsung range on the appliance showroom floor, showing that the door is built to keep the hot outer layer from touching the stove's door. That is, the door sits out slightly from the body of the appliance, even when fully closed. The applicant says this is a design issue, not a defect.
26. The applicant says the problem with food preparation is user error due to timing and use of oven settings.
27. The applicant submits it serviced the appliance and determined that it was not defective. Given this service diagnosis, any further issue was between the respondent and Samsung. The applicant says it told the respondent to contact Samsung directly, but she refused to do so. The invoice said that the customer should contact Samsung to "obtain warranty service." On this basis, I find that the respondent was responsible to contact Samsung if she had further concerns.
28. Eventually, Samsung was contacted about the appliance. The respondent says this second opinion was arranged by the applicant, whereas the applicant says the respondent dealt with Samsung directly. I find it unnecessary to decide who

contacted Samsung, because the evidence shows that the respondent dealt with Samsung directly from this point onward.

29. On May 28, 2019, L, reception manager at the Samsung-commissioned electronics repair shop, emailed the respondent saying that Samsung would contact her to “arrange a replacement” and that they would “take it from here.”
30. On June 20, 2019, the respondent emailed L again saying she had not heard from Samsung. L replied writing “Once the repair has been declined, the work order is completely out of our hands. Samsung should be calling you within about a week or so to discuss a replacement.”
31. I find that communications from L do not explain why Samsung decided to replace the appliance. There is evidence that the appliance was functioning normally, according to the applicant’s service record. Given that evidence, I accept that Samsung agreed to replace the appliance for customer service reasons, and not due to a demonstrated defect in the appliance the applicant delivered.
32. In August 2018, the credit card company reversed the charge, refunding the \$1,340.01 to the applicant. This means that the applicant has not been paid for the appliance or delivery costs.
33. In submissions, the respondent says she is “happy to pay for the stove as soon as I receive a working one.” She says she was expecting a replacement appliance from Samsung in July 2019. The respondent says she is not liable to pay for the stove until a replacement is provided, and because the credit card arbitration was decided in her favour.
34. I find that the credit card arbitration is not determinative of this dispute. No documents were filed providing details of the arbitration, nor the reasons for the charge reversal. The rules for whether a credit card charge is valid are not the same as the laws that apply to the sale of goods.

35. The applicant's invoice stated that there were no returns allowed once the appliance was delivered, unless the manufacturer (Samsung) authorized a replacement.
36. Because the applicant is in the business of selling used appliances, section 18 of the *Sale of Goods Act* (SGA) also applies. This provision says that the goods must be reasonably fit for their express or implied purpose, that they are of merchantable quality, and that they will be durable for a reasonable period in normal use.
37. The respondent argues that the stove did not work properly because her food did not turn out as she wished. I have found that there was no technical problem with the appliance after the service call on July 19, 2018. I find that there is no breach of the implied warranties contained in section 18 of the SGA.
38. The applicant argued that it was misleading for the respondent to advertise that it services its own appliances after purchase, but then defer to Samsung. I find it was appropriate for the applicant to do so in this case where the applicant disagreed with the respondent's service diagnosis. The process was not misleading, but was documented in the invoice which provided that
 - a. Samsung must approve any returns, and
 - b. Samsung holds the warranty against manufacturer's defects.
39. Based on this evidence, I find the respondent was not entitled to a refund for the stove but obtained one by having her credit card company reverse the charges for it. The fact that Samsung may have promised a replacement does not excuse the respondent from paying for the appliance.
40. For these reasons, I find that the respondent must pay the \$1,340.01 purchase and delivery price for the appliance.
41. The applicant claims contractual interest. The invoice provides for a 2% per month interest charge on overdue accounts. The invoice does not express the interest in a yearly equivalent. Under section 4 of the *Interest Act*, the applicant can only get the

maximum of 5% per year contractual interest, because the yearly rate was not set out on the invoice.

42. For that reason, I find that the applicant is entitled to 5% annual interest from August 31, 2018, which I find to be the approximate date the credit card company debited the appliance price from the applicant. This equals \$64.06.
43. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

44. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,529.07, broken down as follows:
 - a. \$1,340.01 in payment for the appliance and delivery fees,
 - b. \$64.06 in pre-judgment interest at 5% annually, and
 - c. \$125 in tribunal fees.
45. The applicant is entitled to post-judgment interest, as applicable.
46. Under section 48 of the CRTA, 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.

47. Under section 58.1 of the CRTA, Julie K. Gibson, Tribunal Member
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.