



Civil Resolution Tribunal

Date Issued: August 23, 2019

File: SC-2019-001489

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Way v. Zhang*, 2019 BCCRT 1004

BETWEEN:

SCOTT WAY

APPLICANT

AND:

TRACY ZHANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Scott Way says he bought a kitchen from the respondent Tracy Zhang through Facebook Marketplace, but that she failed to supply the back of an island and kickplates as agreed. The applicant seeks an order that the respondent provide the missing pieces or pay their \$500 value.

2. The respondent says she sold the applicant a used kitchen on an “as is” basis. The respondent asks that the dispute be dismissed.
3. The parties are each self-represented.

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* (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.
5. 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.
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 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.

ISSUE

8. The issue in this dispute is whether the respondent must either pay the applicant for the value of the island back and kickplate or provide them to him.

EVIDENCE AND ANALYSIS

9. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
10. The respondent advertised a kitchen for sale online for \$500. The evidence before me does not prove what the applicant paid for the kitchen. The advertisement describes a “display” kitchen for sale, including cabinets but not the countertop, soft close for doors and drawers, pull out trays in the pantry, a lazy susan corner, an espresso- coloured island, spice pull out cabinet, and handles. The advertisement does not use the words “as is”.
11. The photograph attached to the advertisement shows an espresso-coloured island. Only one side of the island can be seen in the photograph. The photograph appears to show a complete set of cabinetry and an intact island.
12. On January 15, 2019, the applicant bought the kitchen from the respondent.
13. The applicant and his friend, JRG, went to pick up the kitchen. The parties agree that the back panel of the island and a kickplate were missing. In his submissions, the applicant referred to kickplates, plural. However, in the text messages between the parties, they discuss one missing kickplate. For this reason, I find that only the back of the island and a kickplate are in issue.
14. JRG provided a statement that, at the time of pick-up, the respondent agreed to obtain for the applicant the back panel and any spacers needed to install the cabinets.

15. The respondent submits that she only said she would “try” to find the back of the island and the kickplate. However, the respondent’s text was “will order tomorrow and let you know”.
16. I prefer the applicant’s evidence based on the text messages because they were written at the time and are consistent with JRG’s statement. I find that the respondent agreed to provide the applicant with the back of the island and a kickplate, as part of the kitchen purchase.
17. It is uncontested, and I find, that the respondent did not provide the back of the island or the kitchen kickplate.
18. The respondent says it took some time to find the parts. She says that, before she could do so, she received a threatening text message from the applicant. The respondent says that she stopped communicating with the applicant, due to the threat.
19. However, the respondent did not file a screen shot of any alleged threatening text message in evidence. The text messages filed in evidence only show that the applicant was disappointed that the respondent did not provide the promised parts and would be starting dispute proceedings. I find the respondent has not shown any reasonable basis for failing to provide the items at issue.
20. Given my finding that the respondent agreed to provide the back of the island and the kickplate to the applicant, but failed to do so, I allow the applicant’s claim.
21. The respondent does not have the back of the island or the kickplate, so I find that I cannot order that she provide them. The applicant did not prove the value of these items. He argued that because he is not a finish carpenter, the cost to make the island presentable may exceed the \$500 claimed. However, he did not provide evidence, such as a quote, on this point.
22. On a judgement basis, and taking into account the \$500 advertised price for the entire kitchen, I award \$150 for the value of the missing island back and kickplate.

23. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$150 from January 15, 2019, the date of the purchase, to the date of this decision. This equals \$1.77.
24. 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. The applicant did not claim dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$276.77, broken down as follows:
 - a. \$150 as payment for the missing island back and kickplate,
 - b. \$1.77 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
26. The applicant is entitled to post-judgment interest, as applicable.
27. 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.
28. Under section 58.1 of the CRTA, 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.

Julie K. Gibson, Tribunal Member