



# Civil Resolution Tribunal

Date Issued: February 20, 2020

File: SC-2019-009187

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crozier v. Cooper*, 2020 BCCRT 199

**B E T W E E N :**

MARCIA CROZIER and KARL PETER KASTNER

**APPLICANTS**

**A N D :**

VINCENT COOPER

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about the sale of a diesel generator. The applicants, Marcia Crozier and Karl Peter Kastner, say the respondent, Vincent Cooper, sold them a

misrepresented and faulty diesel generator. The applicants claim \$2,800 as a refund of their payment for the generator, plus \$150 for an expert evaluation. They also want an order that the respondent pick up the generator from their property.

2. The respondent simply says the applicants' claim is false and without merit, and he chose not to provide any evidence or submissions beyond that statement.
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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
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. Where permitted by section 118 of the CRTA, 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**

8. The issue in this dispute is whether the respondent sold a misrepresented and faulty generator, and if so, what are the appropriate remedies.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicants must prove their claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. As noted above, the respondent chose not to provide any evidence or submissions, despite being given the opportunity to do so. All I have from the respondent is his brief statement in the Dispute Response he filed at the outset, in which he stated that the applicants' claim was false and without merit.
10. Based on the evidence and submissions before me, I find the facts are as follows. On September 20, 2019, the applicants' friend JD reviewed the respondent's Kijiji advertisement for a Cub 8000 diesel generator. The ad screenshot in evidence just has a photo of a shrink-wrapped generator, with a \$2,800 price reduced from \$3,200. I accept that the applicants relied on JD, an aircraft maintenance engineer, to help them determine if the generator was a suitable purchase for them.
11. The applicants say that on September 20 the respondent told JD on the telephone that the generator was built in 2011 but had never been run, and so was effectively brand new. The applicants say the respondent added that he was not interested in running the generator because it had no oil, and the applicants would have to buy it without running it first. JD's statement in evidence supports the applicants' position.
12. The applicants say they relied on the information given to JD, and paid the respondent a total of \$2,800 by 2 e-transfers. The applicants say that when they picked the generator up from the respondent's home, he confirmed all of the statements they say the respondent had given to JD. On balance, I accept the applicants' evidence.

13. On September 25, 2019, with the assistance of another friend C, the applicants started up the generator for the first time. The applicants say C had been surprised to find oil and fuel already in the machine, contrary to the respondent's earlier statements. While there is no statement from C in evidence, I accept the applicants' position, in part because the respondent did not provide any contradictory evidence about oil or fuel being in the generator.
14. The applicants say when the engine was started, it ran roughly and produced a lot of black smoke. After several restarts, the engine then caught on fire behind the exhaust cover. The applicants' photos show the fire damage. I accept the applicants' position, which is also supported by a statement from a witness to the smoke and fire, GC.
15. The applicants then sought assistance from another friend, Sean Cochrane, a marine engineer with particular expertise in diesel engines. At this point, Mr. Kastner contacted the respondent about the generator's problems. The applicants say the respondent said he would contact the manufacturer and send someone to look at the generator, but despite follow-ups, the respondent never did so. The applicants' phone records support their position and I accept this is what happened.
16. As set out in Mr. Cochrane's statement in evidence, he determined the generator is faulty. I accept Mr. Cochrane's statement as expert evidence under the tribunal's rules, as he set out his qualifications as a 30-year expert as a second class marine engineer. Mr. Cochrane concluded the factory settings were faulty for the catalytic converter, and also for the "governor", which controls how much fuel goes to the engine. Finally, Mr. Cochrane wrote that the generator was not brand new, because he confirmed with the manufacturer that generators are shipped new without any oil or fuel in them. Yet, when the respondent sold the generator, he shrink-wrapped it with a manufacturer's label attached to the outside. Mr. Cochrane concluded the generator was unsafe for home use.
17. I turn then to the applicants' claims. First, I find the respondent misrepresented the generator as unused. The fact that oil and fuel were in the generator at start-up is

contrary to the respondent's "essentially brand new" representation. I draw an adverse inference against the respondent, because if he had not told the applicants that the generator had never been used, I find he would have expressly said so.

18. Second, I also accept the generator was faulty or defective, because I accept Mr. Cochrane's uncontroverted opinion. The respondent sold a generator that was not reasonably durable, as required under section 18 of the *Sale of Goods Act*. It was defective from the start. Further, I find the tenor of the applicants' emails to the respondent support their position that the respondent had agreed to assist, but then failed to do so. I find the respondent's agreement to help supports a conclusion that the generator's faulty condition was the respondent's responsibility.
19. I turn to the applicants' claimed remedies. Given my conclusions above, I find the generator is of no value to the applicants. I find the respondent must refund them the \$2,800 they paid for it. While the applicants did not provide proof of this payment, I accept it was paid as I find the respondent likely would have disputed it if the claimed payment was inaccurate.
20. Next, the applicants' \$150 claim for payment to Mr. Cochrane. In his statement, Mr. Cochrane wrote he spent 6 hours working on the generator. However, Mr. Cochrane did not mention any charge to the applicants for his services. The applicants also provided no proof of any payment to Mr. Cochrane, such as an e-transfer record or a receipt. I dismiss this claim.
21. Finally, the applicants ask for an order that the respondent pick up the generator, which they say is heavy and requires 3 men to lift it. An order to pick up the generator is an order to do something, also known as injunctive relief. Apart from specific exceptions set out in section 118 of the CRTA that I find do not apply here, I do not have jurisdiction to grant injunctive relief. So, I decline to grant this remedy.
22. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicants are entitled to pre-judgment interest under the COIA on the \$2,800, from September 25, 2019, the date I find most reasonable. This interest equals \$22.29.

23. Under the CRTA and the tribunal's rules, as the applicants were substantially successful I find they are entitled to reimbursement of the \$125 they paid in tribunal fees. No dispute-related expenses were claimed.

## **ORDERS**

24. Within 21 days of this decision, I order the respondent to pay the applicants a total of \$2,947.29, broken down as follows:

- a. \$2,800 in damages, as a refund for the defective generator,
- b. \$22.29 in pre-judgment interest under the COIA, and
- c. \$125 in tribunal fees.

25. The applicants are entitled to post-judgment interest as applicable.

26. 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.

27. 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.

---

Shelley Lopez, Vice Chair

