



# Civil Resolution Tribunal

Date Issued: March 6, 2020

File: SC-2019-007292

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Danicek v. Restoration Hardware Canada, Inc.*, 2020 BCCRT 264

BETWEEN:

MICHELLE DANICEK

**APPLICANT**

AND:

RESTORATION HARDWARE CANADA, INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about a purchase of bed linens. The applicant, Michelle Danicek, purchased bed linens online from the respondent, Restoration Hardware Canada, Inc. The applicant says the linens discoloured. She seeks a full refund of \$2,664.48.

2. The respondent denies that there was any defect with the linens and says the discolouration can only be the result of something the applicant did. It also says the applicant's request for a refund is well beyond the respondent's 30-day return policy. It says the claim should be dismissed.
3. The applicant is self-represented. The respondent is represented by its in-house legal counsel, David Kolek.

## **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 some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
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 or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

## **ISSUE**

8. Were the linens defective, and if so, is the applicant entitled to the claimed \$2,664.48 refund?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove her claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. On April 9, 2019, the applicant purchased bed linens online from the respondent for \$2,664.48. The order consisted of 1 king sheet set, 2 king shams, 4 standard shams, 1 king duvet cover and 2 full/queen duvet covers, all in the colour "fog", and 1 king sheet set in the colour "bone". The linens were delivered on April 21, 2019.
11. In August 2019, the applicant requested to return the linens. The respondent considered her request but ultimately refused the return.
12. The applicant says when she washed the linens, they discoloured in unsightly patches, making them aesthetically unfit for use. She does not say when she first noticed the discolouration, but she says it became worse with time. She says she used and washed the linens as per the manufacturer's instructions. She argues that the linens were not "durable for a reasonable period of time" under section 18(c) of the *Sale of Goods Act* (SGA).

13. The respondent provided a statement from AC, its vice president of quality. AC said she has worked for the respondent for 21 years in various capacities. She has been responsible for sourcing, production and quality since 2012. She said she must be familiar with the care instructions and performance expectations of the respondent's products, including linens. AC said she evaluated the applicant's request for a refund to determine if there was a quality or performance issue with the linens. She said she reviewed the applicant's comments and photos and applied her knowledge and experience of the linens. She concluded that the linens were not defective and were not failing to perform as expected. Rather, it was her opinion that the discolouration was most likely caused by a chemical agent unrelated to the product. She said this pattern of staining can result from the presence of benzoyl peroxide in a face cream or lotion, or from bleach residue in the customer's laundry machine from a previous load. AC said she is not aware of any other reports of these linens experiences this type of discolouration.
14. AC is the respondent's employee and therefore her evidence does not, in my view, qualify as independent expert opinion evidence. That said, AC presented her evidence neutrally and did not stray into advocacy for the respondent. I place significant weight on her explanation that the discolouration was most likely caused by a chemical agent unrelated to the product. Nothing in that opinion appears to be inconsistent with the applicant's photos, although the photos in evidence are small and appear to be photocopied or scanned.
15. I acknowledge that the applicant makes the following points:
  - a. She does not use bleach in her home and uses natural, chemical free cleaners as she has sensitive skin.
  - b. She does not use benzoyl peroxide, which she believes is acne medication.
  - c. If her skincare product caused the discolouration, which she denies, that would not explain how the same discolouration appeared on the sheets in her guest bedroom, which she has not slept in.

- d. Other bed linens purchased from the respondent made from other materials did not discolour in the same way (before they were returned), but towels purchased from the respondent have, and were returned for a refund.
16. The photos do not allow me to discern which linens are discoloured and which are not. As a result, I cannot verify that the guest bedroom linens have also discoloured.
17. I do not find the fact that previously purchased towels discoloured persuasive either way, given they could have had a manufacturer's defect or could have been exposed to the same or a different chemical agent in the applicant's home. Also, the respondent says it processed the towel returns as a goodwill gesture and does not admit the towels were defective.
18. The evidence that other sheets did not discolour falls short of being persuasive, as there was limited evidence about their material, manufacture and pattern of use.
19. On balance, while the evidence about the cause of the discolouration is not entirely satisfactory, it is the applicant who must show it is more likely than not that the linens were defective. I find that she has not met that burden. She has not presented a credible alternative explanation for the discolouration. The applicant has provided no expert opinion or other evidence that cotton linens can spontaneously discolour in spots due to a latent manufacturing defect. In the absence of evidence to explain that mechanism, I am not persuaded that it is a more likely explanation than those put forward by the respondent's witness, AC.
20. In reaching this conclusion, I have not addressed the evidence about the applicant's history of returns, which I find of marginal relevance to determining whether the linens were not durable.
21. The respondent's return policy says the respondent reserves the right to refuse returns of items that are not in as-new condition due to damage or misuse by the client. I find the respondent's decision to refuse return of the linens was reasonable. Because there is insufficient evidence that the linens were not durable, I also find the respondent did not breach any implied warranty under section 18(c) of the SGA.

22. Given my conclusions above, I dismiss the applicant's claim.

23. Under section 49 of the CRTA and tribunal rules, as the applicant was unsuccessful, I find she is not entitled to reimbursement of tribunal fees.

## **ORDER**

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

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Micah Carmody, Tribunal Member