



Civil Resolution Tribunal

Date Issued: June 3, 2020

File: SC-2020-000329

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *James v. British Columbia Hydro and Power Authority*, 2020 BCCRT 610

B E T W E E N :

CHRISTINE JAMES

APPLICANT

A N D :

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about damage caused by a power surge. The applicant, Christine James, is a homeowner. The respondent, British Columbia Hydro and Power Authority, provides electricity to the applicant's house. The applicant says the respondent's equipment caused a power surge which damaged her personal property. The applicant says although her insurance company covered \$5,447.93 of

the damage, she had to pay a deductible. She seeks reimbursement of the \$1,000 deductible she paid to her insurance company.

2. The respondent says it is regulated by legislation and tariffs that preclude it from not liable for damage caused by power surges based on the legislation and a tariff.
3. The applicant is represented by her son, Nicholas James, who appears to be a lawyer. The respondent is represented by an employee.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

PRELIMINARY ISSUES

8. Before turning to the merits of this dispute, I will address two preliminary issues. First, the applicant requested an order for the respondent to produce records of other customers who had received settlement proceeds from the respondent. Second, the respondent says the applicant should not be permitted to advance arguments that were in her submissions but not in her Dispute Notice.

Should the respondent be ordered to produce records?

9. The applicant says according to news stories, in the past the respondent offered \$1,000 to customers who experienced power surges. She seeks a summons for the respondent to produce documents related to its \$1,000 offers to its other customers.
10. The respondent opposes the applicant's request. It says the applicant did not plead a claim concerning other unrelated claims in her Dispute Notice. It also says the records are not relevant to the applicant's claim and that there is no legal obligation to disclose records that are not relevant to the Dispute Notice.
11. Rule 8.2 states that a party can require a person to provide evidence or produce a record by issuing a summons with the case manager's assistance. The applicant says the case manager refused to issue a summons and directed her to raise the issue with the tribunal member.
12. I find whether the respondent chose to compensate a customer for property damage in previous situations is not relevant to the applicant's claim. The respondent is not alleging that it does not pay compensation but instead, that it is not obligated to pay compensation in this case.
13. I refuse to order the respondent to produce the records requested by the applicant. As a result, I do not need to address the applicant's argument that an adverse inference should be drawn from the respondent's refusal to produce the requested documents.

Is the applicant required to include the legal basis for her claim in the Dispute Notice?

14. The respondent says the applicant is precluded from claiming negligence, breach of contract, and raising the issue of its prior settlements with other customers since these allegations were not included in the applicant's Dispute Notice and she did not file an amended Dispute Notice.
15. The applicant says these claims were implicit in the dispute. She also says the respondent was not prejudiced since the claims were included in the applicant's submissions and the respondent had a full and fair opportunity to respond.
16. An applicant is required to provide information in the Dispute Notice about the claim they are making and what resolution they are seeking. However, the applicant is not required to describe the legal basis for their claim at this point in the tribunal dispute process. I find the applicant's Dispute Notice contained sufficient details for the respondent to understand her claim and the remedy she was seeking, specifically that the respondent's actions caused her property damage. I also find the applicant's arguments were consistent with the claim made in the Dispute Notice and the respondent had ample opportunity to respond to them.

ISSUE

17. The issue in this dispute is whether the applicant is entitled to reimbursement of her insurance deductible.

EVIDENCE AND ANALYSIS

18. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
19. The applicant says on August 6, 2019, the respondent supplied electricity to her home that destroyed surge protectors throughout her house and damaged the items

that were plugged into the surge protectors. I infer from this the applicant meant her appliances and other electric devices were plugged into surge protectors. The applicant did not provide a list of the items that were damaged.

20. The applicant says the power surge caused \$6,447.93 of damage to her property. The applicant says she made an insurance claim after the respondent refused to pay for the damaged items. She says her insurance company charged her a \$1,000 deductible and she was reimbursed a total of \$5,447.93.
21. The applicant says the respondent should pay for the \$1,000 deductible since it caused the power surge.
22. While the respondent did not deny that the applicant's property was damaged from a power surge, it denies it is liable for that damage.

Does the Sale of Goods Act apply to the respondent?

23. The applicant says the respondent is subject to the *Sale of Goods Act* (SGA) because electricity is a "good". She says the respondent breached the implied warranty provisions in section 18 of the SGA.
24. The respondent says it is exempt from the SGA based on section 32 of the *Hydro and Power Authority Act* (HPAA). Section 32(1) of the HPAA states that unless stated otherwise, the respondent is not bound by any statute or statutory provision in British Columbia. Section 32(7) lists all of the acts and provisions that apply to the respondent – it does not include the SGA.
25. Based on the HPAA, I find the SGA does not apply to the respondent. I dismiss the applicant's submission that the respondent breached the implied warranty of fitness under the SGA. I also dismiss the applicant's submission that the electricity supplied by the respondent was not reasonably fit for the purpose it was purchased or was not of merchantable quality.

Does the Electric Tariff affect the applicant's claim for damages?

26. The respondent says according to section 9.5 of the Electric Tariff (tariff), it is not liable for breach of contract and negligence. The applicant says the tariff is a contract between a vendor and customer and that she was not aware of its terms. She also says it has no legal force or effect if the customer is unaware of the content of the contract.
27. The tariff is prepared by the British Columbia Utilities Commission and sets out the terms and conditions for providing electricity to its customers, including setting the rates. It applies to any person who the respondent provides electricity to, regardless of whether the person submitted an application for service (see the definition of "Customer" under section 1.2). I find the tariff is binding on the applicant since she receives electricity from the respondent.
28. Section 9.5 of the tariff states that the respondent is not responsible or liable for any damage or expense caused by "any interruption, termination, failure or defect" in providing electricity, even if the respondent was negligent. However, this does not apply to damage or expense resulting directly from the respondent's willful misconduct.
29. Based on section 9.5, I find the respondent would be liable for damage or expense resulting from its willful misconduct. Willful misconduct occurs if the respondent intended to cause the loss that actually resulted or if it acted recklessly and with knowledge that the loss would probably occur (see *Peracomo Inc. v. TELUS Communications Co*, [2014] 1 SCR 621 at paragraph 60).
30. Did the respondent act recklessly? The applicant says the power surge occurred because the respondent did not properly maintain its equipment that was on the road outside of her property. The applicant relies on the respondent's Distribution Trouble and Outage Report which stated that "service neutral burnt off due to preform rubbing thru hot leg on service. As a result customer experienced voltage surges. tip of preform was not completely wrapped and punctured hot conductor

insulation” (copied as written in the report). Neither party explained what this meant. The applicant says the respondent breached its duty of care since the tip was not completely wrapped.

31. Where a dispute’s subject matter is technical or beyond common understanding, it is often necessary to produce expert evidence to help the decision-maker determine the appropriate standard of care (see *Bergen v. Guliker*, 2015 BCCA 283, paragraphs 129-131). I find that expert evidence is required to explain the cause of the power surge, and the standard of care for maintaining equipment.
32. I find that the applicant has not provided any expert opinion proving the standard of care for maintaining equipment. I also find the applicant has not demonstrated that the respondent was reckless in maintaining its equipment.

Was the respondent negligent?

33. The applicant says the respondent was negligent. She also says despite the tariff, the respondent is liable for damages for torts and breaches of duty under section 30(2) of the HPAA. Section 30(2) states that the respondent is liable for damages for torts committed by its servants and agents and for damages for a breach of duty that attaches to the ownership, occupation, possession or control of property. The applicant further states that the respondent cannot contract out of statutory law.
34. According to section 12 of the HPAA, the respondent’s liability under section 30(2) is subject to section 9.5 of the tariff, which was discussed above. Section 12 of the HPAA states that despite common law, if the respondent enters into an agreement, it is deemed to have all of the rights, powers and privileges granted by the agreement and that the agreement is enforceable by the respondent. As discussed above, under section 9.5 of the tariff and absent willful misconduct, the respondent is not liable for any damage or expense caused by “any interruption, termination, failure or defect” in providing electricity, even if the respondent was negligent.
35. Based on the above, I dismiss the applicant’s claim that the respondent is liable for any negligent actions of its servants and agents.

TRIBUNAL FEES AND DISPUTE EXPENSES

36. 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. As the applicant was not successful, I dismiss her claim for reimbursement of tribunal fees and dispute related expenses.

ORDER

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

Rama Sood, Tribunal Member