



Civil Resolution Tribunal

Date Issued: August 19, 2020

File: SC-2020-002087

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Walton v. Tompkins*, 2020 BCCRT 925

BETWEEN:

DONOVAN WALTON

APPLICANT

AND:

RONALD TOMPKINS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a defective hot tub. The applicant, Donovan Walton, bought a refurbished hot tub from the respondent, Ronald Tompkins, through a Craigslist advertisement. Mr. Walton claims \$2,250 as a refund for the hot tub, its cover, and

purchased chemicals. Mr. Walton agreed for Mr. Tompkins to do a repair, but says he failed to do so within the time agreed and then months later arrived unannounced and picked up the hot tub, at which time Mr. Walton said he wanted a refund.

2. Mr. Tompkins says his business Raincity Spas (Raincity) sold the hot tub, not him personally. However, Mr. Tompkins submits he is willing to refund \$1,400. Mr. Tompkins says he picked up the hot tub for repair as requested to repair a leak, but that once Mr. Tompkins had the hot tub Mr. Walton said he did not want the hot tub back. Mr. Tompkins says “we don’t do refunds”, but that he does offer a warranty which is what he says the parties were pursuing.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT 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 CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is to what extent, if any, is Mr. Walton entitled to a refund for the defective hot tub.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. I note Mr. Tompkins chose not to submit any evidence, despite having the opportunity to do so.
10. It is undisputed Mr. Walton bought a refurbished hot tub from Mr. Tompkins in July 2019, through a Craigslist advertisement. As noted above, Mr. Tompkins says it was bought through his business Raincity. However, neither party submitted the Craigslist advertisement for the hot tub, or any contract, emails or text messages, or receipt for payment. The only written documentation about the sale in evidence is Mr. Walton's banking record showing that on July 3, 2019 he e-transferred \$2,000 to "Ron". I have no evidence before me that Raincity is incorporated, such that it would be a distinct entity from Mr. Tompkins personally. I find Mr. Tompkins is an appropriate respondent in this dispute.
11. It is also undisputed that around 3 days after purchase, Mr. Walton complained to Mr. Tompkins about the hot tub's condition. First, he said that when he unwrapped it after Mr. Tompkins' delivery workers left, there was damage on the side "grid". A photo in evidence appears to support this assertion, which is undisputed and so I accept it.

12. Second, Mr. Walton says the hot tub started to leak within 3 days of it being plugged in. While Mr. Walton provided photos that I find do not prove a leak, I accept that it was leaking because Mr. Tompkins admits it was. Mr. Tompkins also admits he picked up the hot tub in order to repair the leak, which I discuss further below.
13. However, it is further undisputed that within a few weeks after purchase Mr. Tompkins attended Mr. Walton's property to try and repair the hot tub leak with a "leak seal", but that this was unsuccessful in repairing the leak.
14. Third, Mr. Walton says the used hot tub cover provided by Mr. Tompkins was not usable, as he says it was leaching plastic bits into the hot tub. Mr. Walton provided an undated video where I accept Mr. Tompkins told Mr. Walton that he would split the \$250 cost of a brand new hot tub cover, which Mr. Walton accepted. This means Mr. Walton agreed to pay \$125 for a new hot tub cover. This matters because much of Mr. Walton's evidence shows the debris build-up in the hot tub due to lack of a cover, which I find could have been avoided if Mr. Walton had bought the new cover that he agreed to buy. To the extent Mr. Walton argues that the chemicals were used but wasted given the debris build-up, I find he has not proven this.
15. Fourth, Mr. Walton says that when Mr. Tompkins' workers picked up the hot tub to take it away for repair on October 23, 2019, bits of rotten wood fell out from underneath it. I find nothing is proved by Mr. Walton's photos of chunks of wood, but nothing turns on this, given my conclusion below.
16. Mr. Tompkins submits "we don't do refunds" on used hot tubs. However, Mr. Tompkins submitted nothing to show the parties' agreement was that there would be no refunds even if the product was defective. It is irrelevant that Mr. Tompkins may have a general policy of "no refunds". What matters is whether Mr. Walton agreed to it, and I find no such agreement is proved.

17. Further, section 18 of the *Sale of Goods Act* (SGA) sets out implied warranties. Even if this were a private rather than commercial sale, there is an implied warranty of durability. Plus, based on Mr. Tompkins' admission that the sale was through his business Raincity, I find it was a commercial sale. So, the SGA section 18 implied warranties of fitness for purpose and saleable quality apply. Given the above undisputed defects that I find existed almost immediately after purchase, I find Mr. Tompkins' breached the implied warranties in the SGA. Given this, nothing turns on the fact that I also accept Mr. Tompkins offered a warranty to Mr. Walton (as heard on a submitted audio file), but never provided documentation of it.
18. So, what is the appropriate remedy? Mr. Tompkins has the hot tub. Based on the parties' submissions, I find some amount of \$2,000 paid was for purchased chemicals for use in the hot tub. These are still in Mr. Walton's possession, and he does not dispute they have some value. As noted above, neither party provided evidence of what Mr. Walton paid for the hot tub as distinct from the cover and chemicals. Mr. Walton also does not explain the discrepancy between his \$2,250 claim and the \$2,000 e-transfer amount. Mr. Walton says Mr. Tompkins initially offered \$1,700 as a refund (that he refused), which Mr. Tompkins does not deny. As noted, Mr. Tompkins now offers \$1,400.
19. On balance, I find \$1,700 is the appropriate refund. Mr. Walton has not proved he paid more for the hot tub, and he still has the chemicals in his possession. I prefer \$1,700 over \$1,400, since Mr. Tompkins admits he offered "an amount" and did not expressly deny he had earlier offered \$1,700. I do not agree with Mr. Tompkins that the cost of the service calls and the hot tub's removal should be deducted from the cost. The only reason those were necessary was because Mr. Tompkins sold Mr. Walton a defective hot tub, and so I find Mr. Tompkins should bear these expenses.
20. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Walton is entitled to pre-judgment interest under the COIA on the \$1,700 from July 3, 2019, the date he paid Mr. Tompkins. This equals \$34.10.

21. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. As he was largely successful, I find Mr. Walton is entitled to reimbursement of the \$125 he paid in CRT fees. No dispute-related expenses were claimed.

ORDERS

22. Within 30 days of this decision, I order Mr. Tompkins to pay Mr. Walton a total of \$1,859.10, broken down as follows:

- a. \$1,700 in compensation for the hot tub,
- b. \$34.10 in pre-judgment COIA interest, and
- c. \$125 in CRT fees.

23. Mr. Walton is entitled to post-judgment interest, as applicable.

24. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

25. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair