



# Civil Resolution Tribunal

Date Issued: August 25, 2020

File: SC-2020-000970

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maruf v. Sam Manj (dba Furniture Land & Mattress)*, 2020 BCCRT 951

B E T W E E N :

NILUFAR ABDUL MARUF

**APPLICANT**

A N D :

SAM MANJ (Doing Business As FURNITURE LAND & MATTRESS)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about a furniture sales agreement.
2. The applicant, Nilufar Abdul Maruf, purchased a bedroom set from the respondent, Sam Manj (doing business as Furniture Land & Mattress). Ms. Maruf says the dresser is damaged and she does not want the nightstands. She says Mr. Manj has

refused to replace the damaged dresser or accept the nightstands for return. Ms. Manj claims a refund of \$300 for both nightstands and asks for a replacement bedroom set.

3. Mr. Manj says the bedroom set is a floor model and therefore Ms. Maruf is not entitled to a refund or exchange. He says he told Ms. Maruf this before she purchased the bedroom set. Despite the policy, Mr. Manj says that he offered Ms. Maruf a \$100 refund for each nightstand, which she refused. Mr. Manj asks that the dispute be dismissed.
4. Both parties are self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The CRT 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.
7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether Mr. Manj is responsible for the damaged bedroom set and, if so, what is the appropriate remedy?
  - b. Whether Mr. Manj must give Ms. Maruf a refund for the nightstands and, if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim, such as this one, Ms. Maruf must prove her claim on a balance of probabilities. I have reviewed all submissions and evidence, but I will only refer to that which explains and gives context to my decision.
11. Ms. Maruf provided several screenshots as evidence and referred to invoices, receipts and witness statements. Although given the opportunity to do so, twice, Ms. Maruf did not submit those individual invoices, receipts and witness statements in evidence.
12. On November 24, 2019 Ms. Maruf purchased a 6-piece bedroom set which included a dresser, 2 nightstands plus other pieces. The furniture was delivered to Ms. Maruf on December 18, 2019. None of this is disputed.
13. Mr. Manj says Ms. Maruf visited the store a few times, and talked to 3 different salespeople, before buying the bedroom set. Mr. Manj says he spoke with Ms. Maruf on November 24, 2019 because she wanted a further reduced price on the bedroom set. Mr. Manj agreed to sell the set for less than the ticket price. Mr. Manj

recalls telling Ms. Maruf that the set was a floor model, and that she could not return the set for a refund or exchange.

14. I do not accept Ms. Maruf's statement that she was not aware that the bedroom suite she purchased was a floor model. Based on the furniture sales tag provided by Mr. Manj, I find the bedroom set was advertised as a floor model and "as is", for a price of \$2,998. Handwritten on the November 24, 2019 invoice is "floor model".
15. I find the terms of the sales agreement are contained in the November 24, 2019 invoice provided in evidence by Mr. Manj. Ms. Maruf paid \$2,400 for the bedroom set, including taxes, delivery, and set up. There is a customer signature on the receipt. I accept this is Ms. Maruf's signature as she has not denied it.
16. At the very bottom of the invoice, below the customer signature, are 4 typewritten notes about the manufacturer covering all warranties, a 20% restocking charge on goods, that all claims for damages must be made within 3 days of delivery, and that the balance must be paid at least 48 hours before the delivery date. Above the customer signature, and above those 4 notes, in bold, are "SPECIAL INSTRUCTIONS", which say "ALL SALES FINAL ONCE ORDER PLACED! NO REFUNDS. NO CANCELLATIONS." (reproduced as written). The special instructions are inconsistent with the numbered notes at the bottom of the invoice. Given Mr. Manj's testimony, and the rest of the evidence, I find it more likely that the special instructions cancel out the usual terms of claims for damages. By signing the invoice and paying a deposit I find that Ms. Maruf agreed to the sales terms, which included no refunds and no cancellations.
17. Based on photos provided in evidence by Ms. Maruf, I find the dresser has a few small holes on the back side of the dresser, a dent at the top of the back side, and what might be a chip out of one corner. The photos are close up images and quite blurry so difficult to discern. In any event, I find it more likely than not that Ms. Maruf was aware that it was a condition of sale that the bedroom set was sold "as is", as she signed the invoice, saw the sales tag, and paid less than the advertised price for the furniture.

18. The *Sale of Goods Act* (SGA) also applies to the sales agreement. Section 18 of the SGA sets out implied warranties that the goods be reasonably fit for their intended purpose. I find the intended purpose of the dresser is storage. I find the dresser, as it was delivered to Ms. Maruf is fit for its intended purpose of clothing storage. So, I find Mr. Manj has not breached the implied condition of fitness in section 18 of the SGA.
19. Based on December 20, 2019 emails provided in evidence by Ms. Maruf, I find Ms. Maruf asked Mr. Manj to replace the dresser. Mr. Manj, or one of his employees, offered to repair the dresser damage but Ms. Maruf declined, and again asked for a replacement. I find Mr. Manj's offer to fix the dresser does not obligate him to provide any refund or exchange of the furniture. Further, as Ms. Maruf declined Mr. Manj's offer, I find Mr. Manj is no longer bound to fix the damaged dresser. I dismiss Ms. Maruf's claim for the dresser.
20. The parties agree that, when Ms. Maruf decided she no longer wanted the nightstands, Mr. Manj offered to take back the nightstands for \$100 each, but that Ms. Maruf declined the offer. I accept Mr. Manj's explanation that he was trying to satisfy Ms. Maruf as a customer, despite the no refunds or exchanges condition of the sale. I find that Mr. Manj's nightstand offer does not cancel the no refunds or exchanges condition of the agreement. Rather, I find Mr. Manj offered to alter the agreement to accept a return of the nightstands. As Ms. Maruf declined the offer, the original agreement stands and Mr. Manj is not required to provide any refund or exchange to Ms. Maruf. I dismiss Ms. Maruf's \$300 claim for the nightstands.
21. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In this case, Ms. Maruf was unsuccessful and so I find she is not entitled to reimbursement of her CRT fees, or any dispute-related expenses.

## **ORDER**

22. I dismiss Ms. Maruf's claims, and this dispute.

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Sherelle Goodwin, Tribunal Member