



Civil Resolution Tribunal

Date Issued: November 5, 2020

File: SC-2020-005159

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nadjafov v. Best Buy Canada Ltd.*, 2020 BCCRT 1248

BETWEEN:

EMIN NADJAFOV

APPLICANT

AND:

BEST BUY CANADA LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the alleged improper installation of a washing machine.

2. The applicant, Emin Nadjafov, says he purchased a new washing machine from the respondent, Best Buy Canada Ltd. (Best Buy), who also had the machine installed at his home by one of its contractors. Subsequently, the washing machine's hose leaked, and Mr. Nadjafov says it was due to Best Buy's improper installation of it. Mr. Nadjafov seeks \$2,000 in damages. Best Buy says there is no evidence the installation caused the machine's leak and, in any event, the leak occurred nearly a year after the initial installation. Best Buy denies owing Mr. Nadjafov any money.
3. Mr. Nadjafov is self-represented. Best Buy is represented by its in-house corporate counsel, Sasha Gritt.

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). Section 2 of the CRTA states that 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. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
6. Section 42 of the CRTA says that 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. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Best Buy improperly installed Mr. Nadjafov's washing machine, such that it is responsible for the subsequent water leak and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Nadjafov bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that on May 16, 2019 Mr. Nadjafov purchased a new front-loading washing machine from Best Buy. On May 23, 2019, the washing machine was installed at Mr. Nadjafov's home by Best Buy's third-party contractor. That third-party contractor is not a party to this dispute.
11. Mr. Nadjafov says the washing machine began leaking and he tried to contact Best Buy in March, April and May 2020 to notify it of the issue. He does not indicate when he first noticed the leaking, but I infer it was approximately March 2020. Mr. Nadjafov says Best Buy unreasonably did not return his phone calls during this time period, so he went to the store on May 30, 2020. Best Buy says its stores were closed from March to May 2020 due to the COVID-19 pandemic, and that created some delay in

answering customers' enquiries. I accept this explanation, and in any event, I find nothing turns on the 2-month delay.

12. Mr. Nadjafov says he is entitled to compensation because Best Buy's contractor failed to properly install the drainage hose from his washing machine to the wall. He provided a photograph dated May 1, 2020 which shows the disconnected hose. Mr. Nadjafov subsequently paid another contractor, Andy's Appliance & Refrigeration (Andy's), to investigate and fix the water leak. A June 2, 2020 invoice from Andy's notes that it ran troubleshooting tests and "put back drain hose properly". Mr. Nadjafov was charged \$198.50 for this service. Notably, Andy's is not critical of the initial installation of the washing machine, but rather just notes that the hose was disconnected, as shown in Mr. Nadjafov's photograph.
13. Despite Mr. Nadjafov's assertion, I am unable to accept that Best Buy was negligent in installing the washing machine based on a photograph of a disconnected hose. Given that nearly one year passed between the washing machine's installation and the eventual leak, it is unclear what caused the hose's disconnection. That is, whether it was indeed an improper installation 10 months earlier, general loosening over time, or some other reason.
14. Best Buy argues Mr. Nadjafov has not provided any expert evidence indicating a likely cause of the disconnected hose, and I agree. Mr. Nadjafov says in his reply submissions that he "can arrange" for an expert opinion from Andy's if it is necessary. However, parties are told throughout the CRT dispute resolution process that they must provide all evidence relevant to the dispute, including any necessary expert evidence. Given what parties are told, I find to pause this dispute to allow Mr. Nadjafov to obtain an expert report at this late stage would be unfair to Best Buy and would be contrary to the CRT's mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

15. Here, I find whether Best Buy's contractor's washing machine installation fell below the required professional standard is outside ordinary knowledge and requires expert evidence (see: *Bergen v. Guliker*, 2015 BCCA 283). Without such evidence, I am unable to find that Best Buy or its contractor act negligently. As a result, I dismiss Mr. Nadjafov's claims.
16. Given my conclusion above, I do not need to discuss Mr. Nadjafov's claim for damages in any detail. However, I do point out that despite claiming \$2,000 for "water leakage and damages", Mr. Nadjafov did not provide evidence of any damage resulting from the alleged water leak except one photograph which depicted towels on a tile floor beside the washing machine. Mr. Nadjafov explained the \$2,000 sought included reimbursement of the \$1,888.24 he paid for the washer and dryer and delivery and installation, as well as the \$198.50 paid to Andy's to reconnect the hose, and several hours of Mr. Nadjafov's own time dealing with the leak and repair. Even if I had found Best Buy responsible for the leak, I would not have awarded reimbursement of the purchase cost of the washer and dryer, which he did not provide any receipt for and there is no allegation there is anything wrong with the washer or dryer themselves. I also would not have awarded compensation for Mr. Nadjafov's time spent dealing with the leak as the CRT does not generally order compensation for "time spent" dealing with a dispute, and I see no reason to deviate from that here.
17. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Nadjafov was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

18. I order Mr. Nadjafov's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair