



Civil Resolution Tribunal

Date Issued: April 20, 2021

File: SC-2020-008545

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Woldu v. 0965658 B.C. Ltd. dba Aldergrove Furniture Warehouse, 2021*
BCCRT 403

B E T W E E N :

KIROS WOLDU

APPLICANT

A N D :

0965658 B.C. LTD. dba ALDERGROVE FURNITURE WAREHOUSE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is about bed bugs found in a 5-piece bed set with mattress (furniture).
2. The applicant, Kiros Woldu, says that the respondent, 0965658 B.C. Ltd. dba Aldergrove Furniture Warehouse, sold him the furniture contaminated with bed bugs.

The respondent disagrees and says that it delivered brand new sealed furniture to the applicant and that the bed bugs pre-existed in the applicant's home.

3. The applicant seeks a refund of \$2,569.28, the amount he paid for the furniture.
4. The applicant is represented by a family member. The respondent is represented by an employee.

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). 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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 in the interests of justice.
7. Section 42 of the CRTA says 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 CRT considers appropriate.

Late Evidence

9. The applicant provided 7 photos as late evidence. The respondent had an opportunity to respond to the late evidence but chose not to do so. So, I find that there is no breach of procedural fairness and I admit it and address its relevant weight below.

ISSUE

10. The issue in dispute is whether the respondent is responsible for the bed bugs found on and in the furniture, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. I note the applicant chose not to file any reply submissions despite having the opportunity to do so.
12. The parties agree that on April 18, 2020 the applicant purchased the furniture from the respondent.
13. It is undisputed that bed bugs were found in the applicant's home after the furniture purchase.
14. The applicant says that he first noticed the bed bugs in May 2020 but later found out the bed bugs were from the mattress bought with the furniture. The applicant did not say where and how he first noticed the bed bugs. I infer the applicant means that he first noticed the bed bugs in May 2020 somewhere in his home and later learned the source of the bed bugs was from the mattress. The applicant also did not say how he determined the source of the bed bugs was from the mattress.

15. The applicant says that he conducted 3 treatments of the bed bugs but without any success. No evidence was provided on the form of treatment used each time and whether the treatment was performed by a pest control professional.
16. The applicant submitted 6 photos showing images of dead brown insects scattered around what appears to be the furniture. I infer these images depict some the furniture, which is not disputed, and I accept that the dead insects were dead bed bugs. However, I cannot determine from the photos which furniture item these dead bed bugs were found on or originated from.
17. The applicant also filed in evidence 1 photo of a bucket of water with black insects floating in it. I accept that the black insects are the bed bugs at issue, which is undisputed.
18. The respondent submits the following undisputed evidence, which I accept:
 - a. The furniture consisted of a Homelegance bedroom suite, with a queen size bedframe, a dresser, a mirror, and a nightstand, and a Spring Air queen mattress,
 - b. It delivered the brand-new sealed furniture to the applicant,
 - c. It was 5 to 6 months after the furniture's purchase that the applicant reported bed bugs,
 - d. It requested each of Homelegance and Spring Air to investigate the applicant's bed bug claim, and
 - e. It has sold hundreds of Homelegance bedroom suite sets and Spring Air queen sized mattresses and has never received a complaint about bed bugs.
19. Homelegance, also known as Wood Dr Inc., and Spring Air, also known as Restwell, each sent their own representatives to attend the applicant's home to investigate. The respondent submitted their investigation findings in evidence.

20. Homelegance's statement said that upon inspection of the bedroom suite set, it did not find any bugs or infestation on the furniture. I accept this undisputed evidence.
21. Spring Air's statement said that its inspection did not find any bug infestations in the mattress. Spring Air further stated that it had been manufacturing mattresses since 1926 providing product to several multi-national accounts and had never encountered a bed bug complaint. I also accept this undisputed evidence.
22. Significantly, Homelegance and Spring Air each stated that it independently spoke with the applicant's building manager who said that the applicant previously had bug infestation problems in the home. Spring Air further says that the building manager said that the applicant had "several" bed bug problems over the years.
23. Homelegance's and Spring Air's respective conversations with the building manager is hearsay evidence. However, 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, including hearsay evidence. Here, I find the hearsay statements are relevant, reliable and admissible. I find the hearsay statements relevant because the dispute is about which party is responsible as the bed bug's source. I find the hearsay statements are reliable because each hearsay statement independently corroborates each other. Further, the applicant's history of bed bugs is undisputed. As noted above, the applicant was given an opportunity to provide reply submissions to this evidence but chose not to do so.
24. I find that on balance the applicant has not proved the mattress or other furniture was the source of the bed bugs while the furniture was in the respondent's possession. I say this given the undisputed history of bed bugs in the applicant's home. Without any evidence from a pest control expert as to the origin of these bed bugs, I cannot find the respondent responsible for their existence in or around the furniture.
25. In summary, I find that the applicant has not met his burden of proving that the respondent is responsible for the bed bugs.

26. Further, the applicant has failed to prove their damages for a full refund. There is no evidence or submission about which furniture item, aside from the mattress, is now unusable due to the bed bugs.

27. For the reasons above, I dismiss the applicant's claim and this dispute.

28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicant was not successful, I do not order reimbursement of the tribunal fees. The respondent did not pay fees or claim expenses.

ORDER

29. I dismiss the applicant's claim and this dispute.

Roy Ho, Tribunal Member