



Civil Resolution Tribunal

Date Issued: April 25, 2022

File: SC-2021-005152

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Williamson v. Hebert*, 2022 BCCRT 481

BETWEEN:

DARIN WILLIAMSON

APPLICANT

AND:

DANIEL HEBERT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about the sale of used Air Conditioning Units (ACs).
2. The applicant, Darin Williamson, seeks a \$1,400 refund from the respondent, Daniel Hebert, for 3 ACs he bought from him off Facebook Marketplace. He says he pre-paid for the ACs and when he met Mr. Hebert to pick them up they were missing

parts. Mr. Williamson says he no longer wanted the ACs and asked for a refund of the purchase price, which Mr. Hebert refused to give him. He seeks a refund on the basis that Mr. Hebert allegedly misrepresented the ACs.

3. Mr. Hebert says he had told Mr. Williamson that the ACs were missing some hoses. He says he provided Mr. Williamson with some extra parts, which was more than what he advertised. He says Mr. Williamson is not entitled to a refund.
4. The parties are each 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). 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.
9. As a preliminary issue, Mr. Williamson alleges that Mr. Hebert “purposely and fraudulently tampered with the submitted evidence by allegedly removing Facebook Marketplace “alters” about changes to the advertisement. Mr. Hebert says he never tampered with Facebook and the reason his own evidence has no notifications is because Facebook does not notify the seller when they change their own advertisement. There is no evidence about Facebook’s notification process and I find Mr. Williamson has not shown that Mr. Hebert removed any alerts or otherwise tampered with evidence. I also find nothing particularly turns on the lack of alerts in Mr. Hebert’s evidence. This is because there is no dispute that Mr. Hebert changed the advertisement after the initial posting, Mr. Williamson was notified of the changes, and as discussed below, I find he responded to the revised posting.

ISSUE

10. The issue in this dispute is whether Mr. Hebert misrepresented the ACs and if so, must he refund Mr. Williamson the \$1,400 purchase price.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Williamson must prove his claims on a balance of probabilities (which means “more likely than not”). 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.

12. On June 27, 2021, Mr. Hebert first advertised a single 14,000 BTU portable Haier portable air conditioner for \$395 on Facebook Marketplace. He undisputedly changed his advertisement to 3 ACs instead at \$575 each. The revised advertisement listed 3 brands and models of ACs and stated:

Portable air conditioners for sale. All work great. Must be picked up Monday evening. There are 3 air conditioners available, each uses 2 hoses and there are only 2 hoses. You can buy them separately or use a dryer hose from Home Depot. Asking \$575 each. As is.

13. Mr. Williamson responded to the revised advertisement and offered to buy 2 of the ACs for \$800 or 3 for \$1,200. The parties then negotiated and Mr. Williamson offered \$1,400 for all 3 ACs “NOW or I’ll ride the heat for 2 days”. Mr. Hebert accepted the \$1,400 offer on condition that Mr. Williamson “honour that deal”. Mr. Williamson agreed, sent Mr. Hebert \$1,400 by e-transfer, and told him he would pick them up the next day. He then messaged Mr. Hebert asking to delete the Facebook ad because he already paid and the “Units are my property”.
14. In addition to the Facebook messages, the parties discussed the ACs by phone. Based on the cell phone record in evidence, I find the call happened soon after Mr. Williamson sent the e-transfer for the ACs to Mr. Hebert. Mr. Hebert says Mr. Williamson called to ask him to remove the Facebook ad and he asked about remotes and window kits. Mr. Hebert says he agreed to remove the ad, told him he had 2 hoses that fit any of the ACs and he did not know if he had the other parts.
15. In contrast, Mr. Williamson says Mr. Hebert told him the ACs were “complete”. However, Mr. Williamson also agrees Mr. Hebert told him the ACs were missing hoses. So, I find it unlikely that Mr. Hebert described the ACs as “complete” since he expressly said they were missing parts. I come back to the relevance of the parts below.
16. The parties agree that Mr. Williamson and his friend “DW” met Mr. Hebert to pick up the ACs on June 28, 2021. Mr. Williamson says it “quickly became apparent that the

respondent wanted us to essentially load and go, directing us to back up both vehicles to his back-alley garage and load the units and leave”. This is somewhat supported by DW’s statement in evidence. Mr. Williamson says Mr. Hebert gave them the 3 ACs, 2 hoses, and a remote and did not give him the opportunity to plug the ACs in to test them. He says DW then asked Mr. Hebert “where are all the “window kits?” and Mr. Hebert said he would go check and came back with only 1 window kit. Mr. Williamson says he no longer wanted the ACs and asked Mr. Hebert for his money back before he left the property, which Mr. Hebert refused to refund.

17. Mr. Hebert’s evidence is slightly different. He says they never asked to test the ACs, they seemed in a rush, and they just loaded the ACs into Mr. Williamson’s truck. He says the window kits were not part of the sale but he gave the kit to Mr. Williamson anyway and declined the refund after speaking to his wife. He says that since he gave Mr. Williamson more than he paid for, there was no basis for a refund.
18. The parties’ texts show Mr. Williamson sent Mr. Hebert a follow up message asking again for a refund. Mr. Hebert replied that he is not “Costco” and has no return and refund policy. Mr. Williamson then started this CRT dispute.
19. I note that it is not entirely clear from Mr. Williamson’s submissions whether he took the ACs or left them behind. Since Mr. Williamson paid for them and is not seeking a refund on the basis that he never received the ACs from Mr. Hebert, I find he likely loaded them in his truck and took possession of them.

Did Mr. Hebert misrepresent the ACs?

20. As mentioned, Mr. Williamson seeks a full refund for the ACs on the basis of misrepresentation. To succeed on a claim for negligent misrepresentation, Mr. Williamson has to establish that:
 - a. The seller made a representation to the purchaser that is untrue, inaccurate, or misleading,
 - b. The seller was careless or negligent in making the representation, and

c. The purchaser reasonably relied on the misrepresentation.

(see test in *Van Beek v. Dodd*, 2010 BCSC 1639)

21. If a seller makes a negligent misrepresentation, the buyer may be entitled to compensation. If not, the principle of buyer beware generally applies to private purchases of used goods. An exception to this principle is when a warranty applies, which was not argued here. As I find no evidence of fraud, I have not discussed the law of fraudulent misrepresentation.
22. Mr. Williamson says Mr. Hebert “misrepresented” the ACs as in “excellent condition”, except for the missing hoses. He says in “reality” a newly purchased AC would have the AC unit, a remote, 2 hoses, 4 hose connectors, and window kits, and these ACs did not have all these parts.
23. Based on the submitted photographs, AC models and installation guides, I find each AC unit that Mr. Williamson purchased from Mr. Hebert was a free-standing portable unit. The manufacturers’ guides in evidence state the AC units come with a “window adapter kit”, which includes hoses with connectors and a window “panel” to vent through a window. The guides do not show whether all 3 AC units sold new would have also had remotes, and the photographs show they had buttons on the top to program them. So, I am not satisfied that each AC had a remote or that any remotes were missing from the sale.
24. While I agree with Mr. Williamson that the purchased AC units did not have all the window kit parts, I find Mr. Hebert never represented that they had these parts. As discussed, the Facebook advertisement states there were only 2 hoses in total and the ACs were being sold used and “as is”. Considering the ACs were missing hoses, I find it should have been clear that the AC window adaptor kits were incomplete. I also find Mr. Hebert never told Mr. Williamson that the ACs had complete window kit parts during the parties’ pre-sale negotiations.

25. The relevant Facebook advertisement also did not describe the ACs in “excellent condition”. Instead, it stated the ACs “all work great”. There is no evidence that the 3 ACs were not working as described or that they had any defects. So, I find Mr. Williamson has failed to prove that the ACs were not all working great.
26. Based on the whole of the submitted evidence, I find Mr. Hebert never represented the ACs as anything other than what they were. I find Mr. Williamson has not proven misrepresentation on a balance of probabilities and I dismiss his claim for a refund.
27. 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. I see no reason in this case not to follow that general rule. I find Mr. Williamson is the unsuccessful party and is not entitled to reimbursement of his paid CRT fees or dispute-related expenses.
28. Mr. Williamson also seeks “exemplary damages” on the basis that Mr. Hebert allegedly wasted the CRT’s time. Considering Mr. Hebert was the successful party, I find no basis to award Mr. Williamson damages. Instead, I find Mr. Hebert is entitled to reimbursement of the \$50 for CRT fees he paid to set aside the default order as provided by the CRT’s rules.

ORDERS

29. Within 30 days of the date of this order, I order Mr. Williamson to pay Mr. Hebert \$50 for CRT fees.
30. Mr. Hebert is entitled to post-judgment interest, as applicable.
31. 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.

32. 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.

Trisha Apland, Tribunal Member