



Civil Resolution Tribunal

Date Issued: August 29, 2022

File: SC-2022-001685

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kaemmer v. Conkin*, 2022 BCCRT 964

BETWEEN:

PETRA KAEMMER

APPLICANT

AND:

DAVID WILLIAM CONKIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a used heater. The applicant, Petra Kaemmer, purchased a used heater from the respondent, David William Conkin, which Ms. Kaemmer says was defective. Ms. Kaemmer seeks a refund of the \$375 she paid for the heater, plus \$389.05 in expenses related to her attempts to fix the heater.
2. Mr. Conkin says the heater was in working order when he sold it and denies owing Ms. Kaemmer any refund.

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). 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. 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.

ISSUE

8. The issue in this dispute is whether Ms. Kaemmer is entitled to \$764.05 for a refund of the heater and related expenses.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Kaemmer must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. In late 2021, Ms. Kaemmer purchased a used heater from Mr. Conkin through Facebook Marketplace. Mr. Conkin says this was sometime in November 2021, though I find messages in evidence say it was likely December 2021. I find nothing turns on the specific date.
11. Ms. Kaemmer says Mr. Conkin advertised the heater as a “good working heater” but that when her father installed it, it did not work. Neither party submitted a copy of the heater’s advertisement.
12. A February 28, 2022 invoice says a plumber replaced a worn thermocouple and adjusted the pilot. The heat exchanger was inspected and no cracks or holes were found. One burner had been moved out of position. In their invoice, the plumber stated the “unit is unsafe to operate” but did not explain why. Finally, the plumber stated, “due to the age and condition of this unit we will not be able to service it again”. Ms. Kaemmer seeks a refund of the \$375 she paid for the heater, plus \$169.05 for the plumber’s invoice, \$200 for her father’s time installing the heater, and \$20 for fuel.
13. Mr. Conkin says the heater was in good working order when he sold it. He says 3 months passed between when he sold the heater and when Ms. Kaemmer complained it did not work. He says there is no way to tell what Ms. Kaemmer did with the heater during that time, so he is not responsible for any issues.

Misrepresentation

14. The principal of “buyer beware” generally applies to private purchases of used items (see: *Cheema v. Mario Motors Ltd.*, 2003 BCPC 416). This means that buyers assume the risk that the purchased item might be either defective or unsuitable to

their needs. There is no common law duty for a seller to disclose obvious or known defects, but they cannot actively conceal or misrepresent them (see: *Connors v. McMillan*, 2020 BCPC 230 citing *Floorco Flooring Inc. v. Blackwell*, [2014] BCJ No 2632). In short, a buyer is generally responsible for failing to adequately inspect goods before buying them.

15. If a seller misrepresents the item, either fraudulently or negligently, the buyer may be entitled to compensation for losses arising from that misrepresentation. A “misrepresentation” is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person into buying the item.
16. Fraudulent misrepresentation occurs when the seller makes a false statement of fact that the seller knew was false or was reckless about whether it was true or false, and the misrepresentation induced the purchaser into buying the item.
17. Negligent misrepresentation occurs when the seller carelessly or negligently makes a representation to the purchaser that is untrue, inaccurate, or misleading, and the purchaser reasonably relied on the misrepresentation.
18. It is undisputed Ms. Kaemmer did not test or otherwise inspect the heater before she bought it. Ms. Kaemmer says she trusted the heater was fine, given it was advertised as being in “good working” condition. Other than that one statement, there is no indication Mr. Conkin made any representations at all about the heater. Mr. Conkin says he only owned the heater for a few years and had a gasfitter check it and there were no issues, though he was unclear when this was done.
19. The difficulty for Ms. Kaemmer is that at least 2 months passed between the time she purchased the heater and the time she contacted Mr. Conkin about the alleged issues. During that time, her father admittedly worked to install the heater on his own. Her father’s qualifications to work on the heater are unknown. Given Ms. Kaemmer did not test or have the heater inspected when she purchased it, I am unable to tell whether the heater did not work when she bought it, or whether something happened

during those months that led to the heater's malfunction. Although the plumber wrote that the unit was unsafe, they did not explain why. So, I find it unproven that Mr. Conkin misrepresented the heater's condition.

20. Although the parties did not raise it, I have also considered the *Sale of Goods Act* (SGA). Because this was a private sale, only the implied warranty of durability applies, as set out in SGA section 18. As noted, there is no evidence before me that the heater did not work when initially sold, and it was at least 2 months before Ms. Kaemmer raised any concern about it. I find no breach of the durability warranty, also bearing in mind the heater's age and relatively low cost.
21. Therefore, I find Ms. Kaemmer is not entitled to any refund for the heater's purchase price, or any reimbursement for associated installation and inspection costs. I dismiss Ms. Kaemmer's claims.
22. 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. Ms. Kaemmer was unsuccessful so she is not entitled to reimbursement of paid tribunal fees. Mr. Conkin was successful but did not pay any fees. Neither party claimed dispute-related expenses.

ORDER

23. I order Ms. Kaemmer's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair