



Civil Resolution Tribunal

Date Issued: October 25, 2022

File: SC-2022-003213

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Long v. Trail Appliances Ltd.*, 2022 BCCRT 1165

BETWEEN:

AUDREY LONG

APPLICANT

AND:

TRAIL APPLIANCES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a refrigerator. The applicant, Audrey Long, purchased the refrigerator from the respondent, Trail Appliances Ltd. (Trail), in December 2013. The refrigerator malfunctioned in February 2022. Mrs. Long says when she contacted the manufacturer, LG, about repairs, she discovered that the refrigerator had been manufactured in 2003. She says that Trail misrepresented the refrigerator's age and

failed to sell her a “new” one as agreed, and so she was unable to obtain replacement parts or manufacturer warranty coverage. Mrs. Long requests an order for Trail to replace the refrigerator with a comparable new one. Mrs. Long says she asked Trail for a new replacement or a refund, and says her claim value is \$762.98. So, I find she also requests a refund of that amount as an alternative remedy to replacement.

2. Trail says LG verified that the refrigerator was manufactured in 2013. Trail says the refrigerator functioned correctly for approximately 9 years and Trail provided no warranty, so it owes nothing. LG is not a party to this CRT dispute.
3. In this dispute, Mrs. Long is represented by her spouse, EK. Trail is represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. These are the formal 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.
5. 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.
6. 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.

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.
8. As noted, Mrs. Long requests an order for Trail to deliver her a new refrigerator of comparable value and of a type “to be agreed on” by the parties, and to haul away her present refrigerator. Ordering someone to do something like this is known as injunctive relief. This type of relief is outside the CRT’s small claims jurisdiction, except where permitted by CRTA section 118. I find that an order to exchange Mrs. Long’s refrigerator for a new one is not within the scope of section 118. So, to the extent that Mrs. Long requests an order to exchange her refrigerator for a new one, I decline to grant that remedy for lack of jurisdiction. However, I found above that Mrs. Long also requests \$762.98 in damages as an alternative remedy. A submitted invoice shows that was the price of her refrigerator. So, I consider below whether Trail is liable for those damages.

ISSUE

9. The issue in this dispute is whether Trail misrepresented the refrigerator’s age or failed to sell Mrs. Long a new one as agreed, and if so, is Trail liable for \$762.98 in damages?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mrs. Long must prove her claims on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence but refer only to the evidence and arguments I find relevant to provide context for my decision.

11. First, Mrs. Long says that Trail agreed to provide a new refrigerator under the parties' purchase agreement, and that Trail misrepresented as new the refrigerator it sold her. To prove either negligent or fraudulent misrepresentation, Mrs. Long must show that Trail made a statement that is false, inaccurate, or misleading, and that Mrs. Long reasonably relied on that representation.
12. Mrs. Long says that the dictionary definition of "new" means "having recently come into existence." She says the refrigerator was not new because it was manufactured in 2003, 10 years before she purchased it. Trail submitted inventory evidence that I find shows it took delivery of the refrigerator from LG on November 15, 2013, and sold it to Mrs. Long on December 13, 2013. Trail argues that to its knowledge, the refrigerator was "new." As noted, LG is not a party to this CRT dispute.
13. In the circumstances, I find it was an implied term of the parties' purchase contract that the refrigerator would be "new" in the sense that it was not previously used, and that Mrs. Long would be the first owner to use it. It is undisputed that the refrigerator was unused when Mrs. Long purchased it. I find nothing in the evidence before me shows that the parties agreed, or that Trail represented, that the refrigerator would be manufactured after a certain date or would not exceed a certain age. So, I find Trail provided a "new" refrigerator as agreed. It follows that I find Trail made no misrepresentation. I also find Trail did not breach any contract term about the refrigerator's date of manufacture or age, because there were no such express or implied terms.
14. Even if Trail had agreed or represented that the refrigerator was manufactured after an unspecified date, I find the evidence does not show that it was as old as Mrs. Long alleges, for the following reasons. Mrs. Long says the refrigerator was manufactured in 2003. Some LG emails in evidence say it was manufactured in 2003, and another says it was manufactured in 2013. An email from Mrs. Long's spouse and representative, EK, said that an LG representative told him the refrigerator's serial number was ambiguous and could indicate a manufacture date of either 2003 or 2013. EK's email also said that the refrigerator model had been discontinued in 2005,

so it must have been manufactured in 2003. However, I find EK's evidence on this point is not supported by any of the submitted LG correspondence or other evidence, so I give it little weight. I find the evidence before me fails to demonstrate that the refrigerator was more likely than not manufactured before 2013.

15. Further, Mrs. Long argues that the alleged 2003 manufacture date meant an alleged 10-year LG warranty expired before her refrigerator failed in early 2022, and that replacement parts were no longer available. However, none of the documentary evidence before me shows any details of any alleged refrigerator warranty, including the length of any warranty or when coverage began. I also find the submitted evidence does not show that replacement parts were unavailable.
16. Finally, I find Mrs. Long's claim was, in essence, that Trail allegedly sold her an older-than-expected refrigerator that was not reasonably durable. Under section 18(c) of the *Sale of Goods Act* (SGA), I find it was an implied condition of the parties' contract that the refrigerator would be durable for a reasonable time, having regard to its normal use and the surrounding circumstances.
17. The refrigerator undisputedly functioned well for slightly more than 8 years after Mrs. Long purchased it. Regardless of the refrigerator's date of manufacture, I find there is no evidence before me showing that 8 years was not a reasonable period of durability. So, I find Trail did not breach the implied condition of durability.
18. For all of the above reasons, I dismiss Mrs. Long's claim for \$762.98 in damages.

CRT Fees and Expenses

19. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Mrs. Long was unsuccessful in this dispute, but Trail paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

ORDER

20. I dismiss Mrs. Long's claim, and this dispute.

Chad McCarthy, Tribunal Member