



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rhodes v. Szymanski (dba D.S. Electronics 999 Prairie Electronics)*, 2023
BCCRT 1132

B E T W E E N :

MAUREEN RHODES and FRANCOIS ALAIN

APPLICANTS

A N D :

TONY DERICK SZYMANSKI (doing business as D.S. ELECTRONICS
999 PRAIRIE ELECTRONICS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, Tony Derick Szymanski, operates an electronics business. The applicants, Maureen Rhodes and Francois Alain, left a television with Mr.

Szymanski for diagnosis and possible repair. Ms. Szymanski later recycled the television.

2. The applicants say that Mr. Szymanski had no right to dispose of their television. They ask for \$500 compensation: \$250 for the television and \$250 for mental distress. Ms. Rhodes represents both applicants.
3. Mr. Szymanski says that his policy is to dispose of broken electronics after 30 days if their owner does not pick them up. He says this is set out on the receipt he gave the applicants. So, he says he did nothing wrong. He is 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 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions. I place particular weight on proportionality, given the low value of this dispute.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did Mr. Szymanski breach the parties' contract by disposing of the television?
 - b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The applicants dropped off the television on October 3, 2022. The applicants say the television was spontaneously turning off. Mr. Szymanski charged them \$45 to diagnose the problem. He gave them a receipt under the business name D.S. Electronic Services that said: "We are not responsible for loss by fire and theft, or for goods left more than 30 days". At some point in November 2022, Mr. Szymanski recycled the television. None of the above is disputed. The parties' accounts of what happened after October 3 are very different.
11. The applicants say the following. They called Mr. Szymanski on October 6 but did not get through. Mr. Alain attended Mr. Szymanski's shop on October 26, but Mr. Szymanski ignored him and refused to unlock his shop's door. Mr. Alain went back

again on November 14, and Mr. Szymanski said he did not know where the television was. Mr. Szymanski eventually admitted that he had scrapped the television. However, Mr. Szymanski told them he only did this because he had been unable to get hold of the applicants by phone. At that point, the applicants noticed that the phone number Mr. Szymanski had recorded on the receipt was wrong by one digit. They had given him Ms. Rhodes's business card with her phone number, but Mr. Szymanski transcribed it wrong.

12. Mr. Szymanski says the following. He spoke to the applicants a few days after they dropped the television off and told them it would cost \$265 to repair, less the \$45 diagnostic fee. He suggested that the television, which was around 10 years old, may not be worth repairing. He tried to call them several more times but they never responded, so he recycled the television. By the time Mr. Alain went to the store on November 14, the television was already gone.
13. I agree with Mr. Szymanski that he was entitled to dispose of the television after 30 days. That contractual term was prominently displayed on the receipt, and so it was binding on the applicants. However, I agree with the applicants that the term implicitly required Mr. Szymanski to make reasonable attempts to contact them first. This is consistent with Mr. Szymanski's own evidence that he tried to phone them multiple times without success. I accept that Mr. Szymanski tried to contact the applicants, but ultimately it was his fault he recorded the wrong telephone. I say this because he does not dispute that he received Ms. Rhodes's business card, and that explanation is consistent with his evidence that the phone number he used did not work.
14. On balance, I conclude that Mr. Szymanski breached the parties' contract by recycling the television without first notifying the applicants.
15. As for remedy, the applicants are entitled to the television's actual market value as it was when they left it at the store, not the market value of a working television. I doubt that a 10-year-old television that turns spontaneously turns itself off has any market value, despite the applicants' submission that it was otherwise "in perfect

condition". A television remaining on is a key aspect of its operation. I find that the appropriate compensation is \$45, the amount the applicants paid Mr. Szymanski to diagnose the television.

16. The applicants also claim \$250 for mental distress. There is generally no compensation for mental distress when a person breaches a contract. The only exceptions are contracts whose purpose is to provide at least some psychological benefit. An example of a contract that includes a psychological benefit is wedding photography. A television repair contract has no psychological component, so I dismiss the applicants' claim for mental distress.
17. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the \$45 diagnostic fee from November 3, 2022, the approximate day Mr. Szymanski recycled the television, to the date of this decision. This equals \$2.18.
18. 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. The applicants were partially successful, so I find they are entitled to reimbursement of half of their \$150 in CRT fees and \$12.27 for registered mail. This equals \$81.14.

ORDERS

19. Within 30 days of this order, I order Mr. Szymanski to pay the applicants a total of \$128.32, broken down as follows:
 - a. \$45 in damages,
 - b. \$2.18 in pre-judgment interest under the COIA, and
 - c. \$81.14 for \$75 in CRT fees and \$6.07 for dispute-related expenses.
20. The applicants are entitled to post-judgment interest, as applicable.

21. I dismiss the applicants' remaining claims.

22. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Vice Chair