



Civil Resolution Tribunal

Date Issued: June 26, 2024

File: SC-2023-005324

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Knezevich v. Wood (dba Same Day Delivery)*, 2024 BCCRT 609

BETWEEN:

LEE ANN KNEZEVICH

APPLICANT

AND:

TALON WOOD (Doing Business As SAME DAY DELIVERY)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about a damaged fridge. The applicant, Lee Ann Knezevich, says the respondent damaged her fridge after removing it from her home. She claims \$4,900 to replace it. The respondent, Talon Wood (doing business as Same Day Delivery), says the fridge was damaged before he picked it up to take it for repairs.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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 court.
6. 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.
7. As part of its dispute resolution process, the CRT did a company search for Same Day Delivery, and a copy of a BC Company Search for an incorporated company by that name was uploaded. However, I find that based on Mr. Talon's evidence and the locations of the parties, this is not his company. I find the parties were correctly identified in the Dispute Notice and Dispute Response and I proceeded on that basis.

ISSUES

8. The issues in this dispute are:

- a. Did Mr. Wood damage Ms. Knezevich's fridge?
- b. If so, is Ms. Knezevich entitled to \$4,900 for a new fridge?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Ms. Knezevich must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The following facts are not in dispute:
 - a. Ms. Knezevich's fridge was not working and she contracted with Barrons Home Appliance Repair (Barrons) to repair it. Barrons' repairs are not in issue and it is not a party to this dispute.
 - b. Ms. Knezevich contacted Mr. Wood to take her fridge to Barrons for repairs and return it once those were complete.
 - c. On April 14, 2023, Mr. Wood and an employee arrived to pick up the fridge. They did not put a blanket on it before putting it on the dolly to move it to their truck.
 - d. Before Mr. Wood arrived, Ms. Knezevich moved the fridge from the kitchen to the living room.
 - e. Mr. Talon returned the fridge to Ms. Knezevich after it was repaired.
11. Ms. Knezevich says her fridge was in perfect condition before Mr. Wood's picked it up. She says Mr. Wood damaged all 3 doors and the sides of her fridge.
12. I find Ms. Knezevich is alleging Mr. Wood was negligent in moving her fridge. To prove negligence, Ms. Knezevich must show that Mr. Wood owed her a duty of care, he breached the standard of care, and the breach caused or contributed to reasonably foreseeable damage. See *Mustapha v. Culligan of Canada Ltd.*, 2008

SCC 27 at paragraph 3. However, in moving disputes the mover has the burden of disproving negligence, even though, as noted, Ms. Knezevich has the general burden of proving her claims as the applicant. See for example the non-binding but persuasive decision 2 *Burley Men Moving Ltd. v. Fraser*, 2022 BCCRT 468 at paragraphs 19 to 21.

13. Ms. Knezevich says Mr. Wood and his employee banged the fridge on the top of the door while leaving her house. Mr. Wood does not dispute this. I find a mover striking a doorway with an item they are paid to move is negligent. However, this does not end matters as I find below Ms. Knezevich has not proven Mr. Wood caused the damage to her fridge.
14. Ms. Knezevich provided 3 photos of her fridge before Mr. Wood picked it up, and several photos allegedly showing damage to her fridge. The before photos are taken from a distance, while the after photos are taken very close up. Mr. Wood does not dispute the before photos were taken before he picked the fridge up, but disputes they show a perfect fridge.
15. Ms. Knezevich says Mr. Wood would “definitely” have noted the damaged fridge if it had been there when he picked it up. However, Mr. Wood says he had only recently switched to delivery used appliance for delivery in early 2023. Before this, he had delivered only new appliances, which did not need photos taken. I infer Mr. Wood accepted used fridges had damage, and so did not need to make note of it or take photos. Since this dispute, he says he has changed his practice. I accept his evidence and find that while Mr. Wood may have observed the damage when he picked up the fridge, he would not have noted or photographed it.
16. I have closely examined all the photos Ms. Knezevich provided. However, I cannot see any damage to the black plastic side of her fridge in the after photo provided. I find Ms. Knezevich has not proven Mr. Wood damaged the side of her fridge.
17. I am also not able to tell if 2 scratches on the handle, which appear to be less than a centimeter long, would be visible in the before photo. This is because, as mentioned

above, the after photos are from very close, whereas the before photos are from a distance. I come to the same conclusion about the scratch on the freezer. So, I find Ms. Knezevich has not proven Mr. Wood damaged the handles of her fridge or the freezer door.

18. Finally, I turn to the larger dent on the left fridge door. I find both parties agree there was a dent on that side of the fridge after the fridge was returned. Mr. Wood says there is a shadow in the before photo in this location with a line through it, showing the dent was there when he picked the fridge up. I have examined the photo and agree with him. I accept Ms. Knezevich's evidence that her chair is reflected in the fridge in that location, but that does not explain the line through the center, at exactly the spot of the dent after the fridge was returned. So, I find Ms. Knezevich has not proven Mr. Wood caused this damage.
19. As Ms. Knezevich has not proven Mr. Wood damaged her fridge, I dismiss her claim for reimbursement of a new fridge.
20. 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. As Ms. Knezevich was unsuccessful, I dismiss her claim for reimbursement. While Mr. Wood was successful, he did not pay any fees or claim any dispute-related expenses.

ORDER

21. I dismiss Ms. Knezevich's claims and this dispute.

Amanda Binnie, Tribunal Member