



Civil Resolution Tribunal

Date Issued: October 7, 2019

File: SC-2019-004176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harvey et al v. Trail Appliances Ltd.*, 2019 BCCRT 1168

B E T W E E N :

WENDY HARVEY and DOUGLAS EDGAR

APPLICANTS

A N D :

TRAIL APPLIANCES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal), further to a preliminary referral on a limitation issue. The issue is whether the applicants

WENDY HARVEY and DOUGLAS EDGAR are out of time to bring their claim against the respondent Trail Appliances LTD.

2. The applicants are represented by Douglas Edgar. The respondent is represented by RD, an organizational contact.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
4. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "they said, it said" scenario with both sides calling into question the credibility 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. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
5. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue is whether the applicants are out of time to bring their claim against the respondent.

EVIDENCE AND ANALYSIS

8. The applicants claim that the respondent breached a contract between them when it sold them a defective oven which overheated causing damage to their cabinetry. However, they also suggest that the damage was caused when the defective oven was replaced by a new one. They say they discovered the oven's deficiencies on May 31, 2013. The applicants submitted their application to the tribunal on May 29, 2019.
9. The respondent says in the Dispute Response that it sold the oven to the applicants on August 29, 2012 and that it was serviced on different occasions between October 2012 and March 12, 2014 for a faulty light switch, a spinning control knob, and vibrating metal and glass panels.
10. The tribunal invited the parties to make submissions on whether the dispute was out of time under the *Limitation Act* (LA). The LA applies to disputes before the tribunal. A limitation period is a period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have been successful.

11. In British Columbia, the current LA became law on June 1, 2013. It provides that a claim must be started within two years of when it was discovered. For claims discovered before June 1, 2013, an older LA applies. Under the pre-June 1, 2013 LA, the limitation period for breach of contract discovered before June 1, 2013 is six years.
12. A limitation period begins on the first day that a person discovers a claim, meaning the first day that the person had knowledge of the matters in the claim or reasonably ought to have known about the claim.
13. The applicants submit that they moved into their new townhouse in the last week of May 2013 and May 31, 2013 was the first day they slept there. They say that on that day they performed an inspection and first discovered there were deficiencies with the oven. I note the applicants do not specify what exact oven issues were discovered on that day.
14. The applicants argue that the oven's deficiencies amount to a breach of contract and because they were discovered the day before the new LA came into effect the previous LA applies, meaning they have six years to bring forward a claim, which they did as they submitted their application on May 29, 2019.
15. It is unclear if the first complaint date of October 2012 in the respondent's Dispute Response is a typo because in its submission on the preliminary jurisdiction matter the respondent says that the first time they have a record of a complaint is on November 25, 2013 and not 2012.
16. The respondent says the complaint was that the timer setting control on the oven spun freely and that the lower oven vibrated when it was cooking on the bake setting. I find it unlikely that the applicants would be making complaints in 2012 when they had not yet moved into the townhouse and were not using the oven. I also note that applicants do not allege they had issues with the oven going back to 2012.

17. The respondent says that the oven was exchanged for a replacement one on September 8, 2014. The applicants did not dispute this. I also find it unlikely that the oven would be replaced as late as September 2014 if the issues began in 2012. Therefore, I find that the complaints about the oven began in 2013 after the applicants moved in.
18. The respondent argues that the issue was discovered after June 1, 2013 so the new LA applies with its two-year limitation and therefore the respondents are out of time.
19. The applicants submitted evidence showing that they moved into the new townhouse at the end of May 31, 2013. I accept that the applicants moved into the new property during these dates. However, the issue is when they knew or ought to have known the oven had problems, not when they moved into the townhouse.
20. In the Dispute Notice, the applicants submit that after they moved in, which by their own admission was May 31, 2013, the oven performed below their expectations and that the oven temperatures varied badly and spoiled food and baking. The applicants' submission indicates that the performance was based on baking and cooking of different dishes over time. They do not suggest that all this cooking took place on May 31, 2018, or even that any cooking took place the day they moved in.
21. The applicants also submit that at some point the oven overheated and damaged the surrounding cabinetry. The basis of their claim is that they want this damaged cabinetry removed and replaced as they argue it resulted from the defective oven or the installation of the new one. The applicants do not indicate the date that this occurred but there is no suggestion that it happened before June 1, 2013, the day the new LA came into effect.
22. I find that the applicants first discovered issues with the oven after June 1, 2013. I also find that the applicants are not clear on when the oven overheated and damaged the cabinetry but I find it is likely that this would have occurred at around the same time they had the replacement oven installed. This was in September 2014 and also after the new LA came into effect.

23. I find that the applicants discovered their claim after June 1, 2013, and so the new LA applies. The applicants' claim must be brought within two years of when it was discovered which I find the evidence shows was after June 1, 2013 and most likely began in November of 2013 with the overheating and new installation occurring in September 2014. I find that the limitation period expired by September 2016. Since the applicants submitted their application on May 28, 2019, I find the dispute is out of time because it is statute-barred by the LA.
24. Although I have found that the applicants are out of time because they discovered their claim after June 1, 2013, I also note that if the dates in the respondent's Dispute Response are correct and it did begin servicing the oven in November 2012, the applicants would still be out of time as they would have had to apply by November 2018 to be within the previous LA's six-year limitation period.
25. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant was unsuccessful, and the respondents have not incurred any tribunal fees, so I decline to make such an order.

ORDER

26. I dismiss the applicants' claims and this dispute.

Kathleen Mell, Tribunal Member