

BETWEEN

GP
APPLICANT

AND

SKS Ltd
RESPONDENT

KS
SECOND RESPONDENT

Date of Order:

10 February 2017

Referee:

Referee: Murphy

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that GP is to pay SKS Ltd \$1321.58 on or before 2 March 2017.

Facts

[1] SKS Ltd installed a security system at Mr GP's residence. Mr GP paid an installation fee and signed a three year agreement for the provision of system monitoring. Mr GP states he has not received proper service and there have been failures and he has not subsequently paid because of these reasons. Further he was told not to pay SKS until the matter was sorted. He seeks a refund of all monies paid to SKS being \$528.92.

[2] SKS Ltd ("SKS") counter claims \$2312.77 from Mr GP for breach of contract.

Issues

[3] The issues I must decide are:

- a. Is the security system of acceptable quality?
- b. Is the monitoring service being provided with reasonable skill and care?
- c. Are the amounts claimed reasonable?

Is the security system of acceptable quality?

[4] The Consumer Guarantees Act 1993 provides protection for consumers when purchasing goods from suppliers. Section 6 of the Act requires goods to be of acceptable quality. Section 7 of the Consumer Guarantees Act states that acceptable quality means that the goods are fit for all purposes for which goods of the type in question are commonly supplied; acceptable in appearance and finish; free from minor defects; are safe; and, are durable, as a reasonable consumer, fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to amongst other things the nature of the goods and the price.

[5] Mr GP states that the security system he purchased was not acceptable quality because it had minor defects and was not fit for purpose. He states the detector wasn't working because when he came back in to the house after setting the alarm the alarm did not activate. He states he raised concerns with Mr KS. Mr GP also presented a letter from an organisation stating it had problems with a detector from SKS. He also states that he has been burgled and lives in a high risk area and he has a need for a reliable system.

[6] Mr KS, for SKS, states he had returned to Mr GP's home to change settings on the alarm because he had believed there was a dog in the house. He told the Tribunal that the system Mr GP has, has a standard three minute sleep delay from the last time a person was sensed and this is why Mr GP was able to go back in to his house and not trigger the alarm. Further he states the system installed is an Elixir from Canada and it is a well proven and reliable system. He states that to meet Mr GP's need for security he needs to install more sensors. Mr KS brought key components of the security system to show the Tribunal. Mr KS told the Tribunal that the letter presented to the Tribunal by Mr GP referred to a completely different system.

[7] The concerns raised by Mr GP have been remedied or additional sensors are required to meet his needs. Therefore I find Mr GP has not proved the alarm system is not of acceptable quality.

Is the monitoring service being provided with reasonable skill and care?

[8] Section 28 of the Consumer Guarantees Act states that where services are supplied to a consumer there is a guarantee that the services will be carried out with reasonable skill and care.

[9] Mr GP told the Tribunal that he had a four day period when his internet was down and that this should have immediately triggered a response from the monitoring company and it did not. He states this is unacceptable and a professional monitoring organisation would have alerted him to the problem.

[10] Mr KS states that he agreed with Mr GP that the experience he had was unacceptable and that he took steps, at his own cost, to engage another monitoring company immediately. He states that the service now being provided to Mr GP is exceptional. He provided the Tribunal with a substantial amount of documentary evidence to show the regularity of monitoring and the outcomes of the monitoring of Mr GP's home.

[11] There is no dispute that the service provided from the first company was not provided with reasonable skill and care. There is strong evidence to support that when the matter was raised by Mr GP, SKS met its obligations under the Consumer Guarantees Act and remedied the failure promptly. Because of the lack of evidence from Mr GP and because of SKS's substantial documentary evidence in relation to the second monitoring company I am satisfied that the service provided by the second monitoring company was provided with reasonable skill and care.

[12] Therefore Mr GP had no entitlement to cancel the agreement between the parties.

Are the amounts claimed reasonable?

[13] Mr GP's claim for a refund of \$528.92 includes \$77.74 being two months of payments to the first monitoring company. He is entitled to a refund of \$77.74 because this service was not provided with reasonable skill and care. The rest of the claim fails.

[14] SKS claims \$2312.77 being \$913.45 for the lost commission fee resulting from cancelling the agreement with his first subcontracted monitoring company and \$1399.32 for the balance of the term of the agreement that Mr GP breached.

[15] Because the first monitoring company did not provide services with reasonable skill and care, it was SKS's responsibility to remedy the failure, and any consequential loss is SKS's and not Mr GP's. Therefore I find that the claim for the lost commission fails.

[16] I accept that there had been some administration difficulties that made the billing somewhat less than clear for a period of time. However, Mr GP continued to refuse to pay any monies for the new monitoring service, as required by clause 4.5 of the agreement, despite using the service for many months until SKS exercised its right to cancel under clause 2.3 of the agreement. The agreement provides under clause 2.4 that in such situations Mr GP is liable to pay a decommissioning fee and a sum equal to the balance of the term. The agreement is for 36 months at \$38.87 being \$1399.32. Mr GP has made no payments on this 36 month agreement. I will offset the \$77.74 he is due against the \$1399.32 he owes and that is \$1321.58.

[17] Therefore Mr GP is liable to SKS for \$1321.58.

[18] I note there was no request for the order of the return of the equipment but under the agreement SKS is entitled to decommission the alarm equipment at Mr GP's home and Mr GP is required to allow the decommissioning and removal of the equipment.