



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1350

APPLICANT X Limited

RESPONDENT TE

The Tribunal orders:

1. TE is to pay to X Limited the sum of \$1,442.10 on or before Friday, 16 April 2021.
2. TE is to return the HIK Vision 8/12 Channel NVR hard drive to X Limited.
3. Upon return of the hard drive, TE is not liable to pay any other sum to X Limited.

Reasons

1. In July 2019, TE purchased a digital surveillance system for his home from X Limited (the company). The system cost \$3,696.10.
2. TE has found the system to be unsatisfactory and has not paid for it. The company has filed a claim seeking payment. TE has filed a counterclaim seeking a declaration that he is not liable, and that he is entitled to reject the system.
3. The issues to be resolved are:
 - (a) Is the system of acceptable quality and reasonably fit for purpose?
 - (b) If not, is TE entitled to a refund?

Is the system of acceptable quality and reasonably fit for purpose?

4. Consumer items purchased for personal, household or domestic use are subject to a statutory guarantee that they are of acceptable quality and reasonably fit for the purpose that the customer make known to the supplier for which they have purchased the goods (ss6-8 Consumer Guarantees Act 1993).
5. I find the system is not of acceptable quality and reasonably fit for purpose. This is so because:
 - (a) TE purchased the system on the basis that it would be possible to easily arm and disarm intruder alerts to his phone. The company advised him at the time he decided to proceed that it would have no "major issues" in supplying this functionality.
 - (b) Two issues then arose with the intruder alerts.

- (i) The first was that the intruder alerts were constantly triggered by the camera system. The system therefore sent numerous daily false alerts caused by events such as changes in light, birds, shadows and foliage movement. Attempts were made to “numb” the system, but these either desensitized the system to such a degree that it failed to pick up valid alerts or did not reduce the false alerts. To date, TE continues to receive up to 50 alerts a day as a result of this flaw.
- (ii) The second problem is that the alarm system is not able to support adequate integration with the camera system to enable the intruder alerts to be turned on and off when the alarm system itself is turned on and off. The company found that the existing alarm system was too limited to achieve this, as it only has a singular relay functionality. This functionality is used to ensure camera recording is turned on and off. Intruder alerts to the phone cannot therefore be armed or disarmed in a manner linked directly to the alarm.
- (iii) I find that these difficulties result in a system that a reasonable consumer would not consider was sufficiently free from defects given the functionality that was sought, and the price paid. The system is also not able to be reasonably fit for the purpose that TE made clear when he purchased it. He expressly sought a system that minimised false alerts, and wanted an ability to link intruder alerts to the arming and disarming of the alarm (paragraph 3(b) of the email of 25 July 2019). Whilst that particular paragraph does not seek to link the alerts directly to the arming and disarming of the alarm, TE had rejected a previous system that lacked this functionality, and I am satisfied in light of this, and the correspondence between them, that he had made it clear to the company what he sought. The lack of this functionality substantially reduces the user experience of the system, as there has to be extra communication with invitees to link alerts to any intrusion. When this is coupled with the inability of the system to distinguish between real and false alerts, the system does not have the value or usefulness that was represented.

Is TE entitled to a refund?

- 4. Where a guarantee is breached in a manner that cannot be resolved, or where an opportunity has been given to fix and this has not been achieved, a consumer is entitled to reject the goods and receive a refund of all sums paid, provided this occurs within a reasonable time (ss18,20).
- 5. In this case, the company went to considerable lengths in the weeks after the system was installed to rectify the oversensitivity of the alert system. However, this was not successful. The company also proposed a solution that would link the alert system to the motion detectors of the alarm system, rather than the cameras. TE accepted this resolution, but by the time he did so, it had been retracted. As the company no longer wishes to support any resolution, the starting position is that TE is absolved from any payment for it.
- 6. I have had regard to the time that has elapsed since TE purchased the unit. However, I am satisfied that he made his intentions to cancel the arrangement as early as February 2020, as soon as reasonable attempts to rectify his concerns had failed to do so. I am satisfied that his purchased has been validly cancelled since that time, and that cancellation occurred early enough to entitle rejection of the system. I have had regard to the fact that TE has had use of the system since then. However, I am satisfied that there has been little marginal benefit to TE from this use, he filed his claim in a timely manner and has therefore not engineered the delay, and there has been little or no greater depreciation in the hard drive arising from the delay given that such units become of limited value, and old technology, soon after installation.
- 7. As was discussed with TE at the hearing, the cameras he purchased with the system are in good working order, and should remain in his property, given they are cabled in. This meets his obligation under the general law to mitigate his loss and enables him to repurpose those cameras to another system. TE confirmed he was happy to retain them.
- 8. However, upon return of the hard drive, TE is entitled to a release from liability for the cost of this, plus the sum charged for the installation of the system.

9. As a result, TE is to pay \$1,442.10 to the company by the date stated in the order.

Referee:

J Robertshawe

Date:

17 March 2021