

BETWEEN

EX
APPLICANT

AND

UC
RESPONDENT

Date of Order:

24 May 2017

Referee:

Referee: Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby dismisses the claim.

Facts

[1] Mr and Mrs EX purchased a clothes dryer from UB Limited ("UB") in April 2013. At the same time they purchased a 5-year extended warranty. The dryer has undergone three repairs during that time, once under the manufacturer's warranty and twice under the extended warranty, in June 2014, August 2015 and January 2017 respectively. All the repairs were done at no cost to the EXs, as per the warranty, and UB provided a loan dryer on each occasion.

[2] As Mr EX claimed at the first hearing that the dryer was still noisy and emitting a burning smell following the latest repair in January 2017, the Tribunal proceedings were adjourned to allow that issue to be investigated. UB's warranty repair agent inspected the machine and found there to be no further problem that required repair - they stated that the smell was from rubber residue from the previous belt issue that was repaired in January 2017.

[3] The EXs claim that the machine is not durable because of the number of repairs it has undergone since purchase and they wish to reject the dryer and be refunded the purchase price of \$499.00, claiming also the cost of the extended warranty of \$61.00 and the Disputes Tribunal filing fee of \$45.00.

Issues

Is the EX dryer of acceptable quality as per the Consumer Guarantees Act 1993, specifically is it durable and fit for purpose given the number of repairs carried out between 2013 and 2017?

[4] I find that the claim is not proven on the balance of probabilities as the cause of the failures is insufficiently established. Mr EX says that there have been more than three failures but accepts that no more than three are documented (it appears that the second repair may have been counted twice in the records, as it was done under the extended warranty, but Mr EX says UB told him initially it was done under the manufacturer's warranty).

[5] The evidence presented shows that the first repair, in June 2014, was to address noise and a burning smell coming from the dryer. The technician established that the capacitor was

leaking oil onto the drum and belt and replaced the damaged belt and capacitor and repaired the burnt connector to the element.

[6] The second repair, in August 2015, came about because the dryer was still noisy and would not heat - on that occasion the impeller was replaced. The third repair was a belt replacement because the dryer had stopped spinning.

[7] Mr Ng for UB contends that the nature of a clothes dryer lends itself to failures of this kind due to overloading. He says stress on this type of appliance causes these kinds of problems and that while the dryer is of acceptable quality, he notes that it is a 6kg dryer, family-sized but not a larger capacity family-sized dryer and is at the lower end of the continuum in terms of purchase price.

[8] Mr EX queried whether mis-use including overloading, which he denies, would lead to the different types of failure they have experienced with their machine. While there was no definitive answer to this question presented as evidence, Mr Ng's description of 'stress on an appliance' means that I cannot exclude the possibility that different types of failure could be caused by the way in which the dryer has been used.

[9] As there is also no evidence that points to the failures being the result of poor quality parts, design of the machine or construction, I cannot find that the failures are more likely due to these factors than they are to user issues such as overloading or poor ventilation or lint build-up, all of which are common issues with dryers. It is for this reason that I cannot find there has been a breach of guarantee in terms of durability or fitness for purpose.

Conclusion

What remedy, if any, is available to the EXs?

[10] Given the above finding, no CGA remedy is available to the EXs. Even if I had found that the repairs were due to inherent defects with the dryer, the fact that UB and/or the warranty company has remedied the issues in a reasonable time on each occasion, with UB also providing a replacement machine at no charge for the duration of the repair, means that they have met their obligations under the CGA. As there is no current problem identified, an additional remedy of rejection of the goods and refund is not available - this does not of course affect the application of CGA guarantees in the future.