

ASSESSMENT

1. Dispute Identification

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| Complainant | : 201608-0009153 |
| Nature of dispute | : Demand for quality service |
| Adjudicator | : M F Mbedzi |
| Date | : 09 March 2017 |

2. Summary of the complaint

The Complainant advised that in December 2015 she rented a holiday house for a week from the supplier. The complainant alleges that the quality of the house was substandard and not in line with the “luxurious” quality that is associated with the brand.

The complainant listed the following as the specific flaws associated with the premises:

1. The directions to the house was outdated
2. Old soap
3. Only 8 bathroom towels and 4 beach towels (that need to be replaced)
4. 1 set of linen per bed
5. Outside shower out of order
6. Safety Hazard that included *inter alia* Slippery outside floor area and no fire extinguisher provided in the kitchen for the gas stove.
7. Dirty pots hanging above the counter.
8. Only 9 knives and forks and 4 teaspoons
9. Chipped crockery
10. Old plastic glasses which were broken
11. TV / DSTV did not work at all
12. No washing powder or dishwashing powder provided
13. Filters of the washing machine, dishwasher and pool filter needs servicing
14. Blunt knives
15. All 6 mugs are old and are stained and need to be replaced.

As a result of the above deficiencies the complainant paid a total amount of R39 000.00 instead of the agreed R49 000.00.

The complainant is of the firm belief that the unilateral decision by herself to discount the amount by 20% is fair given the failure by the supplier.

3. The response of the supplier

The Supplier advised that they are confident that their service complied 100% with the promises made. The issues raised by the complainant were only brought to their attention after the complainant vacated the premises and unilaterally altered the agreement. They were thereby robbed of the opportunity to address and remedy her complaint. There is a signed contract for certain payment performance which was not honored by the complainant.

4. Legal considerations

Applicable provisions of the CPA:

Section 54 of the Consumer Protection Act states that

(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—

(a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;

(b) the performance of the services in a manner and quality that persons are generally entitled to expect;

(c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and

(d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

(2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—

(a) remedy any defect in the quality of the services performed or goods supplied; or

(b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure

5. Consideration of facts and law

Section 54 (2)(b) provides the consumer with the right to choose to claim a refund of a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

Although the supplier believes that they should first have been given the opportunity to rectify the problems the choice between rectifying the defect and a refund is that of the consumer.

The question is however who bears the burden of proving the amount to be refunded. If the consumer has already paid the price and seeks a refund the onus will be on the consumer. If the service is defective and the consumer is entitled to a price reduction or to withhold her performance under the *exceptio non adimpleti contractus* (it is a remedy that allows a party to withhold his own performance, accompanied by a right to ward off a claim for such performance until the other party has duly performed his or her obligations under the contract), the service provider would have to prove the amount payable as a reduced price. Therefore, it appears that the onus will rest upon the supplier.

In light of the above, the supplier has provided this office with an offer and their reasons for same are summarized as follows:

Issues raised in light of the Act

The supplier feels that that they have fully complied in terms of the Act in that:

- a) They delivered a timely performance and completion of the product despite not having been fully paid
- b) They feel that the services were provided in a manner and quality that personas are generally entitled to
- c) They provided the use of goods that are free of defects and of a quality that persons are entitled to
- d) They returned any property of the consumer in at least as good condition as they received it

Compensation

The supplier has conceded that there were some items that were below standard and deserved compensation as indicated herein below;

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| 1. Outside shower out of order | R300.00 |
| 2. Chipped crockery | R200.00 |
| 3. TV / DSTV did not work at all | R1000.00 |
| 4. Blunt knives (for carving and paring) | R200.00 |

Given that the supplier was at no time during the stay by the complainant informed of these issues and therefore had no opportunity to respond or rectify, the supplier is of the belief that the amount of **R3,500** would be adequate refund and compensation for these inconveniences.

It is important to note that the complainant has rejected the offer by the supplier.

6. Conclusion & Suggested Resolution

Based on the information provided by the parties and having due consideration for the applicable law, the amount payable as a reduced price is to be determined by the supplier.

Section 54(1)(b) must be read with Section 53(1)(a)(i) which defines 'defect' in relation to services. The definition provides that a 'defect' means 'any material imperfection in the performance of the service, that renders... the result of the service less acceptable than persons generally would be reasonable entitled to expect in the circumstances.'

Considering the list of defects mentioned by the complainant and the fact that the complainant was able to stay her entire booking without complaining the inference can be drawn that the defects were not of a serious nature.

By claiming a reduction of 20% in the agreed price would mean that the consumer was not able to enjoy her stay and one would reasonable expect someone to report it seeing that some of the listed items could have easily be rectified ensuring that the consumer's stay is more acceptable.

Taking into account the nature of the defects our office consider the offer made by the supplier fair and reasonable. We can only suggest that the complainant consider this offer.