



Civil Resolution Tribunal

Date Issued: March 16, 2018

File: SC-2017-005323

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *West et al v. Lefler et al, 2018 BCCRT 83*

B E T W E E N :

Pamela West and Charles West

APPLICANTS

A N D :

Timothy Lefler and Alicia Worobec

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants Pamela West and Charles West bought a house from the respondents Timothy Lefler and Alicia Worobec. The applicants say the house was not in substantially the same condition as when seen at the open house, as

required by the contract of purchase and sale, because the respondents left mudded patches all over the walls. The applicants claim reimbursement of \$1,000, which they paid for painting the house, along with reimbursement of tribunal fees. The parties have resolved the applicants' claim for carpet cleaning, and so that issue is not before me in this decision.

2. The respondents acknowledge they removed items from the walls and that there is also expected damage during a move. The respondents say they did not fail to leave the home in substantially the same condition.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.

7. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a) whether the respondents failed to leave the home in substantially the same condition as when seen at the open house, as required by their contract with the applicants, and
 - b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities.
10. In their submissions, the respondents say:

We patched all of the holes in order to provide the home in the same order that it was viewed. While the walls may be an “eyesore” to the Applicant, we were simply trying to help General wear and tear is likely to happen in a home, especially when moving. The only steps that we took were to assist the purchasers by patching areas that were damaged in the move.
11. I have viewed the photos of the open house and those with the mudded patches. I find the number and size of mudded patches throughout the house is significant. The patches do not show the house “in the same order” as the house was viewed at the open house. The applicants did not ask the respondents to mud or patch the holes.

12. I agree with the applicants that these significant mudded patches mean that the house was not left in substantially the same condition it was in during the open house. I do not accept the respondents' argument that damage is expected in a move so that mudded patches are necessarily insubstantial.
13. Under section 49 of the Act and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. I see no reason in this case not to follow that general rule.
14. The applicants' invoice for the re-painting supports their claim for \$1,000. As set out in my Orders below, I order the respondents to pay the applicants \$1,000, plus tribunal fees, and interest from August 31, 2017.

ORDERS

15. Within 30 days of the date of this decision, I order the respondents to pay the applicants a total of \$1,129.77, broken down as follows:
 - a. \$1,000.00 as reimbursement for the applicants' repainting of the home,
 - b. \$4.77 in pre-judgement interest under the *Court Order interest Act*, and
 - c. \$125.00 in tribunal fees.
16. The applicants are also entitled to post-judgement interest, as applicable.
17. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunals' final decision.
18. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced through the Provincial Court of British Columbia. A tribunal order can

only be enforced if it is an approved consent resolution order, or if, no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair