



Civil Resolution Tribunal

Date Issued: April 18, 2018

File: SC-2017-005407

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gorges et al v. Ireland et al*, 2018 BCCRT 139

B E T W E E N :

Susan Gorges and Robert Anderson

APPLICANTS

A N D :

Steven Ireland and Brenda Ireland

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. On May 17, 2017 the applicants, Susan Gorges and Robert Anderson, and the respondents, Steven and Brenda Ireland, entered into a Contract of Purchase and

Sale for a condominium. This dispute is about whether the respondents agreed to fix a heat pump in their home before the applicants took possession of it.

2. The applicants want reimbursement of their costs to fix the heat pump. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Did the respondents agree to fix the heat pump in the home?
 - b. Are the applicants entitled to a reimbursement of \$330.49 for the cost of hiring an HVAC technician?
 - c. Are the applicants entitled to a reimbursement of \$4,447.80 for the replacement of the heat pump?

EVIDENCE AND ANALYSIS

8. In May 2017, the applicants made an offer to purchase the respondents' home. On May 8, 2017, during the negotiation phase of the purchase, the respondents completed a Property Disclosure Statement.
9. I find the purpose of the Property Disclosure Statement was to have the respondents advise the applicants in writing to any deficiencies in the property.
10. In the Property Disclosure Statement, the respondents were asked to answer a question about whether they were aware of any problems with the heating or central air conditioning system. The respondents ticked the 'Yes' box. They provided details that the heat pump had failed a few times, that it may become more reliable if it is used more often, or that the unit or valve could be replaced. They described the unit as a simple heat pump.
11. The parties all signed the Property Disclosure Statement on May 22, 2017, well ahead of the applicants taking possession of the home on June 21, 2017.
12. In the sentences immediately above the applicants' signatures, the Property Disclosure Statement says that a prudent buyer will use the Property Disclosure Statement as a starting point for the buyer's own inquiries.

13. Clause 3 of the Contract of Purchase and Sale says that the sale is subject to the buyers' approving the Property Disclosure Statement with regards to any information that may negatively affect the property's use or value, and any item of repair. This clause also states that on the signing of the Property Disclosure Statement, the document becomes a part of the Contract of Purchase and Sale.
14. The Contract of Purchase and Sale states at clause 18 that all agreements are set out in the Contract of Purchase and Sale and in the Property Disclosure Statement. The parties signed the Contract of Purchase and Sale.
15. The applicants say that although the respondents disclosed the heat pump was not working, they did not indicate that they were not going to fix the heat pump.
16. The applicants also say that the heat pump is an appliance and that the respondents contracted to provide all appliances in working order.
17. The respondents say that if they had intended to fix the heat pump they would have agreed to it in writing in the Contract of Purchase of Sale. Also, if they had intended to fix the heat pump they would have done so before they put the property on the market to make the condo more attractive to buyers. The respondents also say that a heat pump is not an appliance.
18. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. The applicants have not provided me with any evidence that the respondents agreed to fix the heat pump.
19. The applicants argue that when the respondents disclosed the malfunctioning heat pump they did not say they were not going to fix it. I find that the absence of the respondents making a comment about not fixing the heat pump does not logically lead to the conclusion that they were implying they would fix the pump. Arguably, the opposite is more logical – they are disclosing the malfunctioning pump because they intend to sell it in that condition without fixing it.

20. The Contract of Purchase and Sale clearly states that all agreements are contained in that document and the incorporated Property Disclosure Statement. There is nothing in either document indicating that the respondents agreed to fix the heat pump.
21. The Contract of Purchase and Sale says that all appliances must be provided in good working condition.
22. The second argument of the applicants is that the heat pump is an appliance.
23. The applicants have provided evidence from Wikipedia about the definition of an appliance. Although the tribunal is allowed to accept evidence that would not be admissible in a court, I find that in the circumstances before me Wikipedia does not meet the most basic standards of reliability. This can clearly be seen in the respondents' evidence which shows the Wikipedia definition of appliance was changed to include heat pumps around the date of possession of the home, June of 2017.
24. I find the applicants have failed to meet the burden of proving that the definition of the appliance is broader than what a reasonable person would understand an appliance to be, a refrigerator, stove, dishwasher and such. Accordingly, I find that a heat pump is not an appliance.
25. If I am wrong, and a heat pump is an appliance, I would still find in favour of the respondents. The respondents' evidence, which has not been challenged by the applicant, is that the heat pump was working, albeit, irregularly. The respondents stated in the Property Disclosure Statement that the issue might resolve with regular use.
26. I find it was the applicants' responsibility to take reasonable steps to learn about whether the heat pump simply needed to be used more regularly, or had to be fixed or replaced.

27. The applicants did not provide any evidence that they took the most basic steps to investigate the heat pump issue, or speak to their realtor or the respondents about the issue and the remedy. I find that the applicants failed to take any basic steps to investigate the issue of the heat pump and to convey their expectations about the heat pump to the respondents. Thus, I find they cannot reasonably rely on a general statement about appliances in the Contract of Purchase and Sale to bind the respondents to a specific duty.
28. I find that the applicants have not met their burden of proving their case. I therefore dismiss all the applicants' claims.
29. As the applicants were unsuccessful, in accordance with the tribunal's rules, I find the applicants are not entitled to reimbursement of their tribunal fees or claimed dispute-related expenses

ORDERS

30. I dismiss the applicants' dispute.

Salima Samnani, Tribunal Member