



Civil Resolution Tribunal

Date Issued: June 4, 2018

File: SC-2017-005877

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tang v. Hasan et al*, 2018 BCCRT 228

BETWEEN:

Jingwen Tang

APPLICANT

AND:

Esam Hasan, Xenia Hasan, and Nevenka Kardum

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Karen Mok

INTRODUCTION

1. The applicant, Jingwen Tang, purchased a condominium from the respondent sellers, Esam and Xenia Hasan. The respondent, Nevenka Kardum, acted as agent for the respondent sellers in the transaction.

2. The applicant says that the respondents removed items from the property that ought to have been included in the purchase price, in breach of the contract of purchase and sale.
3. The applicant purchased replacement items for the condominium and seeks reimbursement from the respondents.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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

- 9. The issues in this dispute are:
 - a. Did the respondents breach the contract of purchase and sale?
 - b. If so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

- 10. As noted above, the applicant purchased a condominium from the respondent sellers. Clause 7 of the contract of purchase and sale identifies items included in the purchase price, such as: fixtures, oven/range, dishwasher, refrigerator, curtains, and curtain rods. Clause 8 provides that the property and all included items will be in substantially the same condition at the date of possession as when the buyer viewed it.

The Applicant's Position

- 11. The applicant says that when she took possession of the condominium, the respondent sellers had removed an over the range microwave, a bathroom space saver, three TV mounts, two dressers, curtains, and curtain rods for three rooms. She says that all of these items were in the property at the time she viewed it. The applicant submits that the microwave, space saver, TV mounts, and dressers are fixtures because they were mounted to the wall.
- 12. The applicant submitted as evidence photos of the property, both before and after items were removed. There are no "before" photos of the TV mounts or the dressers. The "before" photo of the second bedroom shows that there were no

curtains hanging on the curtain rod. The “after” photos show holes in the walls where items had previously been affixed.

13. The applicant’s real estate agent contacted the respondent agent asking for return of the items but no resolution was reached.
14. The applicant says she spent \$2,195.61 on replacing the items, renting equipment, purchasing hardware to secure some of the items, and for shipping and installing the microwave. She provided receipts to support her claim for reimbursement. She also seeks reimbursement for her and her husband missing 60 hours of work at \$55.00 per hour, for a total of \$605.00, and \$56.10 for mileage.
15. The applicant also submitted receipts for meals that she and her husband had dining out. She says they were unable to cook because they required the venting from an over the range microwave. She is claiming \$143.29 for the cost of these meals.

The Respondent Sellers’ Position

16. The respondent sellers did not admit to breaching the contract of purchase and sale but say that if they were in breach, it was due to ignorance on their part.
17. The respondent sellers say that the applicant replaced items that were more expensive than other comparable items to those removed, and purchased three extra sets of curtains. They provided as evidence screenshots of what they considered to be items similar in quality, brand, and price, from some of the same retailers from which the applicant purchased her replacement items.
18. The respondent sellers argue that the space saver in the bathroom was not a fixture but was anchored to prevent it from tipping over.
19. The respondent sellers say that there were no dressers in the closets during the open house when the applicant viewed the condominium.

20. The respondent sellers say that the respondent agent had not conveyed to them the applicant's request for return of the missing items and, when the applicant contacted them directly, had advised them not to respond to the applicant. They say that this advice escalated the dispute and the respondent agent should be responsible for reimbursing some of the applicant's costs.

The Respondent Agent's Position

21. The respondent agent says that she is not a party to the contract of purchase and sale and, accordingly, was not in breach of it. She says any liability under the contract for removing items from the condominium rests with the respondent sellers.

Breach of Contract

22. I accept that the applicant and respondent sellers entered into and completed a contract for purchase and sale of the property.
23. Personal property that is slightly attached to land or a building is presumed to be a fixture but that presumption may be rebutted depending on the purpose and degree of annexation or attachment (see *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335 (Ont. Div. Ct.) and *Royal Bank v. Maple Ridge Farmers Market Ltd.* [1995] CarswellBC 375 (B.C. S.C.)). Based on that test, I find that the over the range microwave and TV mounts were fixtures. I find that the bathroom space saver was not a fixture. The space saver was attached only to prevent it from tipping over and it was not necessary for it to be attached in order to function.
24. Accordingly, I find that the respondent sellers breached the contract of purchase and sale when they removed the microwave, TV mounts, curtains, and curtain rods.
25. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. The applicant has not provided me with any evidence that the respondent sellers removed two dressers from the condominium. She had

purchased one replacement dresser and her claim for reimbursement of this dresser is dismissed.

26. The respondent agent is not a party to the contract of purchase and sale, and as such, cannot be said to be in breach of that contract. The applicant's claim against the respondent agent is dismissed. Although the respondent sellers say that the respondent agent should be responsible for some of the expenses the applicant incurred, they did not make a third party claim against her. Accordingly, I cannot consider the respondent agent's liability, if any, in this dispute.

Damages

27. I now turn to the applicant's claim for damages. In assessing damages for breach of contract, the law is that a person, so far as it can be done by money, will be put in the same position as they would have been in if the contract had been performed. For a claim of damages, unless the property is unique, the monetary damage amount will be equivalent to reasonable repairs costs or replacement of a like kind and condition.
28. With the exception of the brand of the microwave, I accept that the applicant did not have available to her information about the price or brand of the items she replaced. Based on a review of her receipts, I find that she spent \$1,904.45 on replacements of a like kind and condition. Although I find that she purchased one extra set of curtains, she did not replace the TV mounts, and the two were of similar value such that they cancel each other out.
29. The applicant's husband is not a party to this dispute and as such, the applicant cannot be reimbursed for his lost wages. In any event, the applicant has not provided any reasonable explanation why she purchased the replacement items during work hours rather than on her own time. Her claim for missing work is dismissed.

30. I find that the applicant made several more trips than was required to purchase the replacement items. Accordingly, I find that she is entitled to \$28.05, which is half her claim for mileage.
31. I am not persuaded that the applicant was prevented from cooking because she did not have an over the range microwave and was, therefore, forced to dine out. Her claim for reimbursement for her meals out is dismissed.

Conclusion

32. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant was not successful in her claim against the respondent agent and as such, I find that she is entitled to two-thirds of the tribunal fees and dispute-related expenses, which amounts to \$83.33 and \$22.73 respectively.

ORDERS

33. Within 30 days of the date of this order, I order the respondents Esam Hasan and Xenia Hasan to pay the applicant a total of \$2,057.00, broken down as follows:
 - a. \$1,904.45 as reimbursement for replacing the removed items;
 - b. \$28.05 for mileage;
 - c. \$13.44 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$111.06, for \$88.33 in tribunal fees and \$22.73 for dispute-related expenses.
34. The applicant's remaining claims are dismissed. The applicant's claims against the respondent Nevenka Kardum are dismissed.
35. The applicant is entitled to post-judgment interest, as applicable.

36. 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 tribunal's final decision.

37. 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 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.

Karen Mok, Tribunal Member