



# Civil Resolution Tribunal

Date Issued: June 7, 2018

File: SC-2017-003407

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tong v. Paramis Home Inc.*, 2018 BCCRT 239

**B E T W E E N :**

Charles Tong

**APPLICANT**

**A N D :**

Paramis Home Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about a broken air conditioner. The applicant Charles Tong bought a house from the respondent Paramis Home Inc., and says the parties' contract required the air conditioner to be working as of the date of possession. The

applicant wants \$541.30, the cost to repair the air conditioner. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. 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. Neither party requested an oral hearing.
4. 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.
5. Under the Act and tribunal rule 126, 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**

6. The issues in this dispute are:
  - a. whether the respondent breached the parties' contract by failing to ensure the air conditioner was in working order on the possession date, and

- b. if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. On May 1, 2017, the parties signed the contract of purchase and sale. The applicant's vacant possession date was June 30, 2017 at 11 a.m. The respondent submits that the air conditioner is not an included appliance and that the contract did not require that it be in working order on the date of possession. I disagree in both respects.
9. First, clause 7 lists the "included items" with the sale: fixtures, blinds, "heating and air conditioning fixtures", and various other items "INCLUDING ... all appliances current kitchen appliances, washer, and dryer" (reproduced as written except where noted). Contrary to the respondent's submission, "all appliances" does not just mean kitchen appliances. Based on the evidence before me, including the repair invoice that described it as "A/C unit in pantry", the air conditioner was an included appliance.
10. Second, clause 3 of the contract states that the respondent seller warrants that the included appliances "will be in proper working order" as of the possession date. Clause 8 of the contract states that the property and all included items "will be in substantially the same condition" at the possession date as when the applicant buyer viewed the property on April 29, 2017.
11. The applicant says the air conditioner was working on April 29, 2017 but stopped working before June 30, 2017. The applicant's realtor's statement confirmed the air conditioner was on when the applicant viewed the property on April 29, 2017. The applicant's tenant moved in on April 1, 2017, when the respondent owned the property. The tenant provided a statement that he often left the air conditioner on

as it kept the unit at a constant temperature. In contrast, the respondent's realtor says the air conditioner was not on. On balance, I prefer the weight of the evidence from the applicant, his realtor, and the tenant, over the respondent realtor's evidence. I find the air conditioner was likely working on April 29, 2017.

12. In any event, the fundamental point is that the air conditioner was not working on the possession date, given the tenant's undisputed evidence that it malfunctioned 3 days before June 30, 2017. I find that clause 3, which specifically addresses appliances, required the respondent seller to ensure the included air conditioner appliance was working on the possession date, June 30, 2017. I say this even if it was broken on April 29, 2017. This is because the more specific term dealing with appliances (clause 3) overrides the more general term dealing with all of the property (clause 8), to the extent those terms conflict.
13. Contrary to the respondent's submission, given clause 3 nothing turns on the fact that the applicant did not do an inspection prior to purchase. I find the respondent breached the parties' contract because the air conditioner was not working on the possession date. I find the respondent must therefore pay the repair costs, which totaled \$541.30.
14. In summary, I find the respondent must pay the applicant the claimed \$541.30 for the air conditioner's repair costs. As set out in my order below, the applicant is also entitled to pre-judgment interest on the \$541.30 under the *Court Order Interest Act* (COIA) from July 17, 2017, the date of the repair invoice.
15. In accordance with the tribunal's rules, as the applicant was successful in this dispute I find he is entitled to reimbursement of \$125 in tribunal fees paid and \$10.70 for the dispute-related expense to serve the Dispute Notice on the respondent.

## ORDERS

16. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$681.56, broken down as follows:
  - a. \$541.30 for the air conditioner repair,
  - b. \$4.56 in pre-judgment interest under the COIA,
  - c. \$125 in tribunal fees, and
  - d. \$10.70 in dispute-related expenses.
17. The applicant is also entitled to post-judgment interest, as applicable.
18. 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.
19. 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.

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Shelley Lopez, Vice Chair