



Civil Resolution Tribunal

Date Issued: September 11, 2018

File: SC-2017-005187

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dang v. YuanHeng CKE Station Developments LTD.*, 2018 BCCRT 512

B E T W E E N :

Richard Dang

APPLICANT

A N D :

YuanHeng CKE Station Developments LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Richard Dang, bought a strata lot in the “Cambie Star” together with a storage unit locker from the respondent, YuanHeng CKE Station Developments LTD. The applicant says the locker was smaller than agreed under the parties’

contract. The applicant seeks \$4,612.96 in damages, representing the loss in the locker's square footage. The applicant is self-represented, and the respondent is represented by James Lin, a lawyer.

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 I can fairly resolve this dispute based on the documentary evidence and submissions before me.
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 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 failed to provide a locker in the size agreed, and b) if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

7. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons.
8. In 2016, the applicant bought the strata lot (also known as unit #801), and included in the purchase price was locker #S2. The applicant says the parties' agreement stated the locker was 62 square feet. However, when the applicant moved into the strata lot on August 17, 2017, he discovered the supplied locker was only 40 square feet, 22 square feet less than specified in the agreement.
9. The respondent says the parties' contract of purchase and sale provided for exclusive use of a locker, but did not specify the locker's size. The respondent further says while the locker was internally valued at \$10,000, ultimately the locker was included in the parties' contract, and that the applicant did not pay anything extra for it.
10. I agree with the respondent that the locker's size was not a specified term as part of the parties' contract. Section 3(b) of the purchase contract states the applicant purchaser would have exclusive use of S2, but it is undisputed that it does not make any representations or warranties about the locker's size or dimensions. Section 13 of the contract clearly states it is the entire agreement between the parties.
11. The central point in this dispute is that a separate document titled "Cambie Star Storage Locker Price List", which states S2's size is 62 square feet, is not a schedule to the parties' purchase contract. In other words, while the applicant refers to the price list as a 'contract schedule', it was not. While not determinative, I also note the evidence that the parties signed the purchase contract on February 29, 2016, and the price list was given to the applicant by a realtor on August 25, 2017, 1.5 years later.

12. Further, section 13 of the purchase contract also provides the applicant purchaser acknowledges that dimensions set out in any material were approximate and subject to change without notice. Further, the price list did not specify the method of measurement for the locker, noting there are different methods available. While the applicant asserts a 35% discrepancy, the respondent says using the “centre line” method, the locker’s area is in fact 62.2 square feet, as set out in the price list.
13. Next, section 15(d) of the parties’ contract of purchase and sale provided that “storage areas”, which includes the locker, are provided on an “as is” basis and the purchaser will have no claim against the seller (the respondent) in respect of any variation in size.
14. In summary, the parties’ contract makes it clear that the storage locker’s size was not specified as a part of the contract and that any variance in the locker’s size cannot give rise to a claim. For these reasons, I find the applicant’s claims must be dismissed. As the applicant was unsuccessful, I find he is not entitled to reimbursement of tribunal fees.

ORDER

15. I order the applicants’ claims, and therefore this dispute, are dismissed.

Shelley Lopez, Vice Chair