



Civil Resolution Tribunal

Date Issued: November 19, 2018

File: SC-2018-000818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lane et al v. Ware et al* 2018 BCCRT 744

B E T W E E N :

Alexander Lane and Shane Valliere

APPLICANTS

A N D :

Grahame Ware and Janet Ware

RESPONDENTS

A N D :

Alexander Lane and Shane Valliere

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. The parties entered into a contract of purchase and sale (contract) for a house and property on Gabriola Island (property). Under the contract, the respondents Janet and Grahame Ware were the sellers (sellers). The applicants Alexander Lane and Shane Valliere were the buyers (buyers).
2. This dispute involves the buyers' claim that the sellers failed to remove garbage from the property and hand over all keys to the property, as required by the contract. The buyers seek \$1,937.42 in payment of their claim.
3. The sellers counterclaim that the buyers failed to return certain belongings that the sellers inadvertently left on the property. The sellers claim they are owed \$1,660 in compensation.
4. The parties were 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; or
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did the sellers fail to remove garbage from the property and hand over their keys to the buyers as required by the contract?
 - b. Were the buyers entitled to keep the sellers' belongings inadvertently left behind on the property?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. This means the buyers must prove their claims, and the sellers must prove theirs.
11. The parties filed submissions containing both their arguments and evidence. I will not refer to all of the evidence or deal with each point raised. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
12. The contract is dated July 15, 2017. Under the contract, the sellers agreed to sell the property to the buyers for \$659,900 on certain terms and conditions. Both the

completion date and the possession date for the contract was August 31, 2017 (completion date).

13. The contract does not specify a time when the buyers would take possession, but instead refers to possession occurring upon registration. I find this refers to when the application to transfer title to the property to the buyers was filed for registration with the land title office. There is no evidence as to when registration occurred.
14. At approximately 2 pm on the completion date, the buyers arrived at the property with moving vans. The sellers explained to the buyers that they were running slightly behind and had one more load of items (items) outdoors to take to the dump. The buyers gave the sellers until 4 pm to clear out their remaining items and refused to provide the sellers with access to the property after that time.
15. The sellers allege that the buyers threatened to have their dog attack the sellers if they re-entered the property after 4 pm on the completion date. The buyers did not dispute or otherwise respond to this allegation. I find that the sellers became very upset as a result of this threat. Ms. Ware suffers from a heart condition, and Mr. Ware was concerned that she may require hospitalization if they did not leave what had become a very stressful situation. In the circumstances, I find that the buyers prevented the sellers from taking the items the sellers intended to remove from the property.

The Buyers' Claim

16. The buyers claim that the sellers left behind an "inordinate amount of garbage and personal belongings" on the property. The buyers say that this was a breach of the contract and suggest that there is a specific term in the contract that required the sellers to remove the items from the property by the closing date. There is no such term in the contract.
17. The contract does, however, require the sellers on completion to provide the property in substantially the same condition as when the buyers saw the property on

July 13, 2017. There is no evidence before me setting out the condition of the property on July 13, 2017. Nor is there any evidence setting out whether the condition of the property changed between July 13 and the completion date. The buyers have therefore failed to prove that by leaving the items behind the sellers breached their obligation to deliver the property in substantially the same condition.

18. Even if the sellers had some obligation to remove the items and breached that obligation, the buyers had a duty to mitigate any loss or expense caused by such a breach. I find that the sellers wanted to remove the items and attempted to remove the items. The sellers even offered to come back the next day or another time. Had the buyers permitted this to occur, they would have fully mitigated the cost of removing the items. However, the buyers prevented the sellers from removing the items and instead chose to hire someone to do it. Having done so, the buyers failed to mitigate their losses and are not entitled to claim the cost of removal from the sellers.
19. The buyers also claim that they changed the locks to “mitigate the risk” of the sellers returning to the property. The buyers say that the sellers should be responsible for this cost. The sellers’ evidence is that they provided the buyers with their keys to the property. The buyers state that the sellers did not provide all keys for the property, but do not provide any explanation as to why they say keys were missing. Not having offered such an explanation, I accept the sellers’ evidence on this point as I find that it is more likely the sellers knew what keys there actually were. I therefore find that there is no basis for the buyers’ claim that they be reimbursed for the cost of their decision to change the locks.
20. On the basis of my conclusions above, I dismiss the buyers’ claims. Given that the buyers were not successful, I find that they are not entitled to reimbursement for tribunal fees or dispute-related expenses.

The Sellers’ Counterclaim

21. The sellers counterclaim and seek an order that the buyers pay them \$1,660 as compensation for money owed to them “that was pre-empted by their hostile attitude and actions.” Based on the record, I find that that the sellers’ counterclaim is to have the buyers compensate them for the cost of several tools and other personal belongings (belongings) left on the property. The sellers say they had to leave the property in a hurry after the buyers threatened them, and in their haste forgot the belongings. It is not clear how they arrive at the claim amount of \$1,660.
22. The buyers did not provide any substantive response to the sellers’ counterclaim. They merely state that the sellers’ counterclaim is nothing more than a reaction to their claim and that they disagree with the sellers.
23. There appears to be limited correspondence between the parties after the completion date.
24. As set out above, the sellers intended to remove the items and take them to the dump. I found that the sellers left the items behind because the buyers prevented them from returning to the property to remove the items. The sellers also say that they left behind a number of things that were included with the property by the contract, or that they chose to “gift” to the buyers.
25. There is no evidence that: a) the buyers gave timely notice to the sellers that they forgot the belongings or; b) that the sellers asked the buyers to return the belongings to them. Rather, from the evidence it appears that the buyers first raised the issue in the context of this dispute.
26. In the circumstances, I find that the buyers had no reason to believe that the sellers intended to retain ownership of the belongings, or to otherwise distinguish them from the items destined for the dump. The buyers were therefore under no obligation to return the items or compensate the sellers for them.
27. Further, as noted above, it is not clear how the sellers arrive at a claim of \$1,660. Even if the buyers had some obligation to return the belongings, I find that the sellers have not proven their claim.

28. Given my conclusions, I dismiss the sellers' claims. The sellers were not successful, so I find that they are not entitled to reimbursement for tribunal fees or dispute-related expenses.

ORDER

29. In the result, I order that the applicants' claim is dismissed, and that the respondents' counterclaim is also dismissed.

Jordanna Cytrynbaum, Tribunal Member