



# Civil Resolution Tribunal

Date Issued: November 27, 2018

File: SC-2018-003199

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bhumrah v. Mann et al*, 2018 BCCRT 764

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

Harpal Bhumrah

**APPLICANT**

**A N D :**

Karanvir Mann and Dapinder Mann

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

### **INTRODUCTION**

1. The applicant, Harpal Bhumrah, bought a house from the respondents, Karanvir Mann and Dapinder Mann. The applicant seeks reimbursement of \$4,935 in expenses incurred in fixing a leak in the master bedroom shower. The respondents say the leak, and associated repair costs, are not their responsibility.

2. The applicant is self-represented. The respondents are represented by Karanvir Mann.

## **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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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.

## **ISSUE**

7. The issue in this dispute is whether the respondents should reimburse the applicant for the claimed repair costs of \$4,935.

## **EVIDENCE AND ANALYSIS**

8. In a dispute such as this, the applicant bears the burden of proof, on a balance of probabilities. I have addressed only the evidence and arguments necessary to explain my decision.
9. Together with another buyer who is not a party to this dispute, the applicant purchased a home from the respondents in June of 2017. In January of 2018, the applicant noticed that the shower in the master bedroom was leaking into the basement suite below. The applicant says it cost \$4,935 to investigate the leak and repair the damage.
10. The applicant says that the respondents were aware of a plumbing issue prior to the sale of the home, but did not disclose it. The applicant also says that the respondents took deliberate steps to conceal the leak.
11. The applicant's evidence includes photographs showing damage and carpenter ants in various areas, as well as video clips showing a ceiling area, and water dripping from a hole cut in the ceiling.

12. The applicant's evidence also contains a statement authored by the applicant and signed by tenants who lived in the house when the respondents owned it. According to this statement, the respondents' real estate agent asked the tenants to place a sofa over cracked tiles to hide them. The tenants report that there had been a leak in May of 2017 which the respondents had repaired. The applicant said these previous repairs were not declared in the Property Disclosure Statement. The applicant also states that neighbours have told him that a vehicle bearing a plumbing company logo was a regular visitor to the house, especially during period of rainfall.
13. As noted above, the applicant asks for reimbursement of \$4,935 spent on repairs, plus tribunal fees of \$175. I note that no invoices have been provided to support the amount of the repair costs.
14. The respondents say they were not aware of any water damage or leaks and that they provided a full Property Disclosure Statement. According to the respondents, the activity observed by the tenants in May of 2017 was touch-up painting, not repairs. The respondents note that the sale was conditional upon the applicant obtaining a satisfactory inspection report, and that this condition was removed by the applicant. The respondents also point out that the applicant signed off on the sale, and indicated full satisfaction with the property at that time. They also question how they could be accountable for an issue that arose six months after the buyers took possession of the house. The respondents say that they are not responsible for the costs associated with the repairs, or the applicant's tribunal fees.
15. I accept that a leak was discovered in the home in January of 2018. The issue before me is whether this issue is related to a plumbing problem the respondents knew about, and failed to disclose to the applicant.
16. The principle of "buyer beware" applies to real estate transactions, and a buyer is expected to make reasonable inquiries about, and conduct a reasonable inspection of, a property. Unless a seller breaches the contract, commits fraud, or fails to disclose a latent defect that cannot be discovered by reasonable inspection, a buyer

assumes the risks for any defects in the condition or quality of the property (see, for example, *Nixon v. MacIver*, 2016 BCCA 8).

17. A latent defect is one which cannot be readily discovered through a reasonable inspection of the property, including one which renders the property dangerous or unfit for habitation. A patent defect is one that can be discovered by conducting a reasonable inspection and making inquiries about the property (see, for example, *Cardwell v. Perthen*, 2006 BCSC 333, affirmed 2007 BCCA 313).
18. The contract at the centre of this dispute is the Contract of Purchase and Sale dated May 14, 2017. As noted by the respondents, this contract was subject to a condition that the buyers obtain a property inspection. This and other “subject to” clauses were removed on May 18, 2017.
19. The Contract of Purchase and Sale also incorporated a Property Disclosure Statement. A seller’s representations in a Property Disclosure Statement must be honest, but not necessarily correct. The Property Disclosure Statement contains information which the seller states is true, based on the seller’s current actual knowledge on the date of the disclosure.
20. Here, when asked whether they were aware of any moisture and/or water problems in the walls, basement or crawl space, the respondents answered “no”. They also denied knowledge of any problems with the plumbing system.
21. The respondents’ evidence is that they could not provide disclosure of a leak as they were not aware of such a problem, and the tenants had never reported an issue. The tenants’ evidence suggests that there may have been a leak in May of 2017, but the location and source of the problem is not clear based on the statement provided. The tenants appear to state that, wherever the problem and whatever its location, it was repaired. It is not clear that the broken tiles are in the area of the leak and it is not established that the respondents covered broken tiles in order to conceal an active water leak.

22. The applicant confirms that an inspection of the property was performed. According to the applicant, the respondents' real estate agent tried to hurry the inspector through the process. The applicant suggests that the leak was not detected as the inspector just turned the water on and off, and it was only when the shower was used regularly that the damage and mold started happening. The applicant says that, if the respondents had disclosed the leak, then the shower would have been run longer during the inspection process. I acknowledge this submission, but I do not find that the applicant was somehow prevented from obtaining a thorough inspection of the property.
23. The wording of the Property Disclosure Statement does not specifically contemplate the disclosure of past problems that have been repaired. Whether or not a past leak had occurred and been repaired, I do not find that the applicant has established the respondents knew of, and failed to disclose, an active issue with the master bathroom shower. I also note that the respondents were open in disclosing other defects about the property.
24. Although the applicant also describes the leak as a "latent problem", I am not satisfied that it amounts to a latent defect as discussed above. The evidence does not establish that the respondents were aware of an active or current leak or ongoing problem. The fact that the applicant lived in the house for 6 months without issue supports this conclusion. Further, there is no indication that the leak rendered the property unfit for habitation or dangerous or potentially dangerous to the occupants.
25. The applicant also suggests that the house had not been constructed "to code" and was made with "poor workmanship". However, I note that the applicant decided to proceed with the purchase despite being aware that some work had been done to the house without permits. This submission does not alter my conclusion.
26. I find that the applicant has not proved that the respondents were aware of, and made false or reckless declarations about, a plumbing issue that resulted in the

January 2018 leak. As the burden of proof has not been met, I dismiss the applicant's dispute.

27. Under section 49 of the Act and the tribunal's rules, the tribunal generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the respondents paid no tribunal fees and claimed no expenses, I make no order in this regard.

## **ORDER**

28. I dismiss the applicant's claims, and this dispute.

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Lynn Scrivener, Tribunal Member