



# Civil Resolution Tribunal

Date Issued: March 4, 2019

File: SC-2017-005842

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milner v. Taylor et al*, 2019 BCCRT 251

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

Nicholas Milner

**APPLICANT**

**A N D :**

Scott Taylor and Joanne Taylor

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a Thermador gas cooktop that was sold in August 2017 as part of a residential house sale. The applicant, Nicholas Milner, was the purchaser of the house and the respondents, Scott Taylor and Joanne Taylor, were the sellers.

The applicant says the parties' contract stated all appliances were to be in good working order and that the respondents had ordered the parts to fix the gas range. After the possession date, the applicant attempted to have the repairs done but says it turned out the repairs would cost more than a replacement cooktop. The applicant seeks \$2,000, so he can replace the cooktop.

2. The respondents deny liability and say they did all they could to work with the applicant to get the cooktop fixed, though they also say the cooktop was still working as of the possession date.
3. The applicant is self-represented. The respondents are represented by Scott Taylor. For the reasons that follow, I dismiss the applicant's claims.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances 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.

6. 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.
7. 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.
8. It is undisputed this dispute relates solely to the gas cooktop. The applicant in his submissions filed sometime after April 2018 states that depending on the outcome of this dispute, he ‘reserves my rights’ to bring claims about other items in the house he says the respondents misrepresented as being in good condition. I will not address anything in this dispute other than the gas cooktop, but will say only that the 2-year limitation period continues to run for any other separate claims.

## **ISSUE**

9. The issue in this dispute is whether the respondents must pay the applicant \$2,000 for a replacement cooktop.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. It is undisputed the parties’ June 12, 2017 Contract of Purchase and Sale included a term that the sellers acknowledge all included items will be in “good & proper working order” as of the September 1, 2017 possession date. It is undisputed the gas cooktop at issue was an included item under the contract. While it appears possession actually was revised to be August 30, 2017, nothing turns on the exact date.

12. The applicant says “good & proper working order” means as the manufacturer intended the appliance to work without modification. The applicant alleges the respondents misrepresented the cooktop was in good working order.
13. Significantly, the respondents deny ever saying they would repair or replace the cooktop, beyond buying and installing the ignitors as discussed below. The respondents also deny that the technician ever said the cost of parts would exceed the cost of a new cooktop.
14. The respondents say that as a goodwill gesture, a week before the possession date they had a service technician from R and C Services come to the house to look at 2 “sticky” ignitors (potentiometers) on the cooktop, even though all 5 burners were in working condition. Ms. Taylor asked R and C Services to order replacement ignitors for the 2 sticky ones.
15. Ms. Taylor says that when the technician went to install the 2 ignitors in September, the technician determined that 3 of the 5 burners had fused shut over time, impeding access to under the cooktop in order to fix the ignitors. Ms. Taylor stated that this would require soldering work and replacement of 3 burners.
16. After a significant back and forth between the parties about arranging the further repair work, on January 29, 2018 the respondents left on the applicant’s front porch all of the parts in a bag that their technician had stated would be required for the repair. The respondents say the applicant was unreasonable in his demands about the timing for the installation and so it can be fairly said they made an offer to have the parts installed and the applicant refused.
17. The applicant agrees the respondent left the bag of parts in January 2018, but says that the respondents ordered the wrong parts. In particular, in his reply submission the applicant says the respondents provided a “Gas Venturi Tube”, but does not identify the part that should have been provided. The applicant’s central submission is that the technician determined the required spare parts are no longer available, and thus the only solution is a replacement cooktop.

18. On balance, I find that the cooktop's "sticky" ignitors amounted to a cooktop that did not meet the contract's requirement of being in proper and good working order. First, the respondents' October 8, 2017 receipt describes the problem as "2 [left hand] burners not lighting". If 2 of 5 burners on a stove are not lighting, I accept that was not in good working order. I find the fact that Ms. Taylor took the initiative before the possession date to get the cooktop inspected and repaired supports this conclusion. The fact that Ms. Taylor took the further steps she did to get the cooktop repaired also supports this conclusion. I do not agree with the respondents' assertion that fixing the cooktop was not required or that the respondents could limit the associated expense because it was a goodwill gesture. As noted, I find it was a contractual requirement.
19. However, the evidence clearly shows that as of late September 2017 the applicant agreed to have the respondents fix the ignitors. The question then is whether the applicant has proved the respondents failed to reasonably do so. The respondents say that they tried various ways to work with the applicant to facilitate a repair, which the applicant simply denies. I find the applicant has not met the burden of proof here. The respondents' earlier October 8 2017 receipt states that "'Venturi' tubes needed to be cut to come apart, and that 'burner bases and holders are no longer available'". Yet, the applicant in his reply says this was incorrect and that he has since had the cooktop repaired and that it is working. In all of these circumstances, I find the applicant has not proved the respondents refused to fix the cooktop.
20. Even if I found the respondents had refused to fix the cooktop, the applicant has not proved his damages. I also find at most the applicant would have been entitled to the reasonable cost of the cooktop's repair, given the applicant says in his submission that he has repaired the cooktop already. However, the applicant has provided no evidence to support his claim for \$2,000, apart from his own submission about the replacement cost of a Thermador cooktop or the cost of the original Thermador cooktop, stated to be from 2005. I have no evidence before me whatsoever about those costs: no quotes or invoices despite indication that such

evidence exists. Also, the applicant did not provide a receipt or other evidence to establish his repair costs.

21. Given my conclusions above, I find the applicant's claims against the respondents must be dismissed.
22. In accordance with the Act and the tribunal's rules, as the applicant was not successful in this dispute he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

## **ORDER**

23. I order the applicant's claims and this dispute dismissed.

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Shelley Lopez, Vice Chair