



Civil Resolution Tribunal

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File: SC-2018-003422

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson v. McKinnon*, 2019 BCCRT 338

B E T W E E N :

Deborah Pearson

APPLICANT

A N D :

Vince McKinnon

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about an allegedly inadequate home inspection. The applicant, Deborah Pearson, says damages from a January 2018 basement flood could have been avoided had the respondent, Vince McKinnon, advised her of a faulty

basement pipe or pump when he conducted a pre-purchase home inspection for the applicant in July 2017.

2. The applicant claims a total of 1,554.34: \$577.50 as a refund of the respondent's inspection fee, \$651.84 for the cost of the plumber, dehumidifier and basement cleaning, and \$325 for 1 weeks of the applicant's tenant's rent.
3. The respondent denies liability, and in particular says determining the pipe's drainage system was beyond the scope of his inspection. The respondent also says the flood resulted in too large a volume of water in the basement to have come from the small pipe in question in this dispute.
4. The parties are each self-represented. For the reasons that follow, I allow the applicant's claims in part.

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 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.
6. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's

process and found that oral hearings are not necessarily required where credibility is in issue.

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: 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.

ISSUE

9. The issue in this dispute is whether the respondent failed to reasonably conduct a home inspection for the applicant under their contract, and if so, what is the appropriate remedy.

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. For this decision, the applicant claims damages for 3 alleged failures, which are discussed in further detail below:
 - a. Failure to identify the significance of the “basement pump”,
 - b. Failure to report the absence of the p-trap on the washing machine, and
 - c. Failure to document a missing radiator in a bedroom.

12. The applicant says had the respondent identified these problems, she could have addressed them and in particular taken steps to avoid the basement flood that occurred in January 2018, 6 months after she bought the house.
13. The applicant provided an undated letter from a plumber Brad Squire. He explained he was hired on January 30, 2018 by the applicant's tenant to assess and deal with the flooded basement. He noted there was 3 to 4" of water in the basement covering the entire basement floor. He described a 4" cast iron pipe coming out of the floor at a horizontal angle in the middle of the floor. It had a "small aquarium style pump" stuffed into the pipe and a grey garden hose attached to it running across the floor into the bathroom, where it terminated in the bathtub. Mr. Squire wrote, "It was very obvious that someone had had a previous problem with this pipe backing up (probably from the perimeter drain) and their solution was to use this little pump, to pump the water into the tub to stop the basement from flooding." Mr. Squire wrote he had no idea how a home inspector could miss an open pipe in the floor with a garden hose running out of it, across the floor and into the bathroom and terminating in the tub. Mr. Squire wrote that he installed an automatic crawl/basement pump system so the flooding problem would not recur.
14. The applicant provided the respondent's photo of the pipe and the hose and it appears to confirm what Mr. Squire reported, and is not disputed by the respondent.
15. Mr. Squire also documented the washing machine p-trap on the sewer line was capped, which was strapped to the wall and therefore easily visible. He said this was "totally illegal and dangerous" as there was nothing in place to stop the methane gas from dumping out of the sewer pipe into the basement. Compounding the problem, the piping was sitting beside a flame-burning oil boiler.
16. Mr. Squire is a plumber, not a home inspector. It may be that certain plumbing issues are obvious to Mr. Squire, but the failure to identify them may not necessarily fall below the standard expected of a home inspector.

17. However, the applicant relies on a document published by the “Home Inspectors Association” that says, among other things, a home inspector must:

a. Inspect:

- i. Interior water supply and distribution systems
- ii. Drain, waste and vent systems
- iii. Drainage sumps, sump pumps, and related piping

b. Describe:

- i. Water supply, distribution, drain, waste and vent piping materials.

18. The same document states that the inspector will inspect “readily accessible, visually observable, installed systems and components”, including plumbing systems. Inspectors must describe and report deficiencies that are evident by sight, touch, smell and hearing. It also states home inspectors are not required to predict the probability of failure or remaining service life of any system. The respondent did not dispute this document had some governance over his conduct.

19. In the respondent’s inspection report, he said the interior supply piping and drain and vent piping was “functional/satisfactory”, but also noted the piping was partially concealed and he could not do a thorough review. There is no mention in the respondent’s report of the p-trap or the basement pipe in issue.

20. Based on the photos in evidence, I accept the cast iron pipe in the basement was there to be seen, which is not disputed. The applicant says while the respondent provided a photo of the pipe, he failed to provide a description of it or explain its deficiency. In his Dispute Response filed at the outset of this proceeding, the respondent stated that the pipe was “simply a strange installation which had no purpose that I can tell”.

21. The respondent disputes the conclusions drawn by Mr. Squire. The respondent also says the likely cause of the applicant’s flood, which involved a significant amount of

water, was not this small 4” pipe, but rather a back-up in the perimeter drain. The respondent also says that none of the photos he provided had an explanation attached, because most things are self-explanatory. The applicant did not provide all of the respondent’s photos, so I accept the respondent’s evidence on this latter point.

22. On balance, I accept that the respondent should have described the cast iron pipe and the pump inside it, particularly given the obviously unusual set-up with the garden hose. Further, the respondent has not explained the failure to identify the p-trap and given it was behind a boiler, the house having furniture in it does not explain this issue. I find the respondent should have addressed the p-trap. I do not say the same about the missing radiator in the bedroom, as I find the applicant has not proved that room was reasonably clear of furniture at the time of inspection such that the respondent should have seen it.
23. I find the applicant is entitled to a refund of the inspection fee. I say this given my conclusions above and because I find the respondent on the whole failed to reasonably provide the professional level of services as the contract implicitly required. The failures to inspect and describe the pipe and the capped p-trap were significant. I acknowledge that I do not have the contract before me or documentary evidence of the price paid, but the respondent did not dispute the amount claimed by the applicant, \$577.50. Bearing in mind the tribunal’s mandate that includes proportionality, I order the respondent to reimburse the applicant \$577.50.
24. The applicant also claims \$651.84 for plumbing and cleaning repairs. I dismiss this claim. The applicant provided no evidence in support, such as a quote or invoice. Given the letter from Mr. Squire, I find the applicant could have provided an invoice to support her claim. Parties are told by tribunal staff to provide all relevant evidence, such as an invoice to support a repair cost claim. I also find the applicant’s post-flood evidence in January 2018 is speculative that she would have addressed the cast iron pipe at the time of purchase had the respondent described it properly.

25. Next, I turn to the applicant's claim for \$325 for one week of her tenant's rent. I dismiss this claim also, as again the applicant has provided no evidence in support such as a copy of her tenancy agreement or a statement from her tenant about the week of rent forgiven. Further, the applicant has not proved that she was required to forgive the week of rent, as she says she voluntarily offered it.
26. In summary, the applicant is entitled to a refund of \$577.50 for the home inspection fee. She is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from July 31, 2017. This equals \$11.77.
27. As the applicant was partially successful, in accordance with the Act and the tribunal's rules I find she is entitled to half her \$175 tribunal fees, namely \$87.50.

ORDERS

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$676.77, broken down as follows:
 - a. \$577.50 in damages,
 - b. \$11.77 in pre-judgment interest under the COIA, and
 - c. \$87.50 for tribunal fees.
29. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.
30. 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.
- 31.

32. 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.

Shelley Lopez, Vice Chair