



Civil Resolution Tribunal

Date Issued: March 29, 2019

File: SC-2018-004931

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Corner v. Majithia*, 2019 BCCRT 398

BETWEEN:

Peter Corner

APPLICANT

AND:

Navin Majithia

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a contract of purchase and sale of a residential condominium. The applicant, Peter Corner, was the buyer and the respondent Navin Majithia was the seller. The applicant says the respondent failed to leave the house in good condition as when it was viewed on December 28, 2017, and says he found a number of broken or missing items when he did a pre-possession walk-through on January 23, 2018. The applicant claims a total of \$3,728.79 for repairs/replacement of the various items.
2. The respondent denies liability, and says the claimed damages existed at the time the applicant viewed the unit. The respondent says the applicant did not do a detailed inspection on December 28 and bought the unit subject-free without any professional inspection.
3. The parties are each self-represented. For the reasons that follow, I allow the applicant's claims in part.

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 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.

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.

ISSUE

8. The issue in this dispute is whether the respondent failed to leave the condominium in substantially the same state it was in during the applicant's viewing, and if so, what is the appropriate amount of damages.

EVIDENCE AND ANALYSIS

9. 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.
10. It is undisputed the applicant viewed the unit on December 28, 2017 with his realtor. The applicant says he inspected the property "at length", whereas the respondent says the applicant's inspection was brief, around 15 minutes. The unit was subject to

a furnished tenancy, and so the parties' contract provided the applicant would have vacant possession on January 24, 2018. It is undisputed that the respondent never lived in the unit and resides outside BC. It is undisputed the applicant's offer was subject-free.

11. On January 23, 2018, after the unit's tenant had moved out on January 12, the applicant walked through and noted a number of items broken or missing. There is no dispute that these items were broken/missing as alleged. I have included below the value the applicant attaches to each item:

- a. Non-functioning bathroom dehumidifier/fan, \$868.62
- b. Broken/torn window blinds, \$464.80
- c. Broken dryer, \$194.25
- d. Broken kitchen and bathroom cabinet doors, a total of \$1,701.64
- e. Broken bathroom door latch, \$113.18
- f. Missing bedroom light fixture, \$236.30
- g. Broken key fobs (2), a total of \$150

12. The applicant's photos show some of the claimed damage: a hole/tear in a pull-down blind, a missing cover on a ceiling light fixture, a broken upper corner of a bathroom vanity door (under the vanity countertop), broken/loose door trim, and a kitchen cupboard that appears broken or at least off its hinge. However, I cannot tell from the applicant's photo of the bathroom latch that it is broken. There are no photos of the alleged broken dryer, the bathroom fan, or any other blinds.

13. The applicant provided a January 23, 2018 email from his realtor to the respondent's realtor. The applicant's realtor states he was present during the December 28 viewing and like the applicant says they "inspected the property at length" and that the home was in good condition on that date. However, the applicant's realtor does

not specifically address the items at issue in this dispute and does not say he and the applicant looked at those items specifically on December 28.

14. The respondent provided an undated statement from his realtor. The realtor stated the property was listed with a notation that it was tenant-occupied with a fixed-term and furnished tenancy agreement. The realtor stated she did not recall the applicant or his realtor testing or checking each of the specific items the applicant claims were broken or missing on January 23. The realtor also stated the 2 fobs left for the applicant's realtor were both in good physical condition and worked for accessing the building entrance door and elevators.
15. The realtor stated the respondent's tenant moved out on January 12, 2018, and says she finds it unreasonable that the applicant claims damages were done in the 14-day period before the applicant took vacant possession. I find this supports a conclusion that the respondent's realtor understood all of the items at issue were in the same state when the property was viewed on December 28, 2017.
16. The applicant relies on section 8 of the parties' December 28, 2017 contract, which states that the house must be in the same condition at possession as it was on the December 28 viewing date. The contract is in the standard form. Sections 7 and 8 provide that the property and all included items (blinds and dryer expressly included) will be in "substantially the same condition" on the January 24, 2018 possession date as they were on the December 28, 2017 viewing date.
17. Thus, the issue in this dispute is what condition were each of the specific items in, on the December 28, 2017 viewing date. There is no allegation in this dispute that the respondent hid defects. Rather, the applicant alleges the damage was done after his December 28, 2017 inspection. In contrast, the respondent says the unit was in the same condition in the roughly 4-week period.
18. The difficulty for the applicant is this. The applicant bears the burden of proof and nowhere does the applicant describe looking at any of the claimed broken/missing items on December 28. I find the tenor of his submission and his realtor's statement

is that when viewing the then-tenanted and furnished unit, they found it generally in good condition.

19. Apart from the missing bedroom light fixture and the broken cabinet doors, I find it unlikely the applicant would have examined the other items' condition. In his submission, the applicant also says that after taking possession, he found 2 key fobs and the dryer broken, which supports my conclusion that those particular items were not inspected on December 28. I note the applicant's repair receipt for the dryer states its condenser leaks at the back and pools water underneath, which is not the same thing as not working at all. In other words, the applicant has not proved the dryer must have stopped working between December 28 and January 23, 2018. In other words, apart from the cabinet doors and light fixture discussed below, I find the applicant has not proved the claimed damage was not present on the December 28, 2017 viewing date.

20. However, on balance I do find that if the cabinet doors and light fixture cover had been broken/missing on December 28, the applicant and his realtor would have noticed it and addressed it with the respondent in making his offer. Thus, I find the cabinet doors and light fixture were likely damaged/missing after December 28, 2017 and so the respondent is responsible for repairing or replacing them.

21. I turn then to the applicant's claimed damages for the light fixture (\$236.30) and the cabinet doors (\$1,701.64). The applicant's quote from the original cabinetmaker was \$291.60 for the kitchen cabinet and \$227.70 for the bathroom vanity door, plus GST and PST, plus an \$800 estimate for shipping and \$65 per hour for installation. The applicant does not explain how he arrives at \$1,701.64. There is no evidence before me that either door would require professional installation. I find the applicant is entitled to \$643.94 for the cabinets, inclusive of tax. On a judgment basis, I allow \$300 for shipping the 2 cabinet doors, as the cabinetmaker's quote was a "rough estimate" for "airshipping". There is insufficient evidence before me as to why air freight is required, and given the high cost of it, I find the applicant has not proved that amount is reasonable. The total for the cabinet doors is therefore \$943.94.

22. As for the light fixture, the applicant provided a quote from Wayfair.ca that shows its full price is \$210.99 (\$236.30 with GST) but was on sale for \$138.99. The applicant does not explain why he claims the full price. An applicant has an obligation to mitigate their damages. I find the applicant is entitled to \$145.94 for the missing light fixture.

23. In summary, the applicant's total award is \$1,089.88, for the broken cabinets and the missing light fixture. I dismiss the applicant's other claims. I do not order pre-judgment interest, as the evidence shows the applicant has not yet incurred the replacement expense.

24. As the applicant was partially successful in this dispute, under the Act and rules I find he is entitled to reimbursement of half his \$175 in tribunal fees, namely \$87.50. I also allow \$5.21, half his \$10.21 claim, for dispute-related expenses related to serving the respondent with the Dispute Notice. This totals \$92.71.

ORDERS

25. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,182.59, broken down as follows:

- a. \$1,089.88 in damages, and
- b. \$92.71, for \$87.50 in tribunal fees and \$5.21 in dispute-related expenses.

26. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.

27. 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.

28. 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