



Civil Resolution Tribunal

Date Issued: April 23, 2019

File: SC-2018-007068

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ruffy v. Kang*, 2019 BCCRT 483

B E T W E E N :

Enrico Ruffy

APPLICANT

A N D :

Taemin Kang

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a contract of purchase and sale for a residential property. The applicant, Enrico Ruffy, was the buyer and says the respondent seller, Taemin Kang, breached the contract in September 2018 by failing to remove garbage, not

supplying a 2nd laundry set (washer and dryer), and not supplying 2 garage remotes.

2. The applicant claims \$2,400 for the laundry set, \$2,500 for garbage removal, and \$100 for garage remotes, for a total of \$5,000.
3. The respondent ultimately admits liability. However, she says the value of the claims is excessive. The parties are each self-represented.

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 is how much the respondent seller owes the applicant buyer for a) garbage removal, b) missing laundry set, and c) 2 garage remotes, under the terms of the parties' residential contract for purchase and sale.

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. The parties signed the residential purchase and sale contract on July 12, 2018. The fact that the respondent failed to provide vacant possession on September 14, 2018 as required by the parties' contract is not contested. The issue in this dispute turns on the value of each claim and what is reasonably necessary to compensate the applicant.

Garbage removal - \$2,500 claim

11. It is also undisputed that at the time the respondent was to have provided vacant possession he left behind a large amount of wood pieces and construction-related items, which the applicant and his realtor say were rotted and worn. Based on the photos in evidence, I agree.
12. I accept these items constitute garbage or debris and should have been removed, as the contract required the property to be left "in clean condition free of garbage or debris". This conclusion is supported by a detailed statement from the applicant's realtor. It is also supported by an email from the moving company I Move You

Moving Inc. the respondent hired it to remove “two truck loads of junk in the backyard”, which it did on September 18 and 19, 2018.

13. The moving company’s email says there were “some items left inside the shed and small amount of tree debris” that the applicant wanted removed. The moving company refused to do so as they were not included in the respondent’s request for removal. The moving company said it quoted the applicant a half to full truck load, or \$600 to \$1200, to the applicant for their removal.
14. The applicant says he contacted 2 waste removal companies and was quoted approximately \$1,400 per truckload. The applicant estimates it would take 2 truckloads. In his evidence, the applicant submits \$2,800 is warranted for garbage removal. There is no explanation for the difference between this sum and the \$2,500 claimed. The applicant acknowledges the respondent’s mover quoted him \$1,200 to remove the “junk”, but says the mover estimated it would take 2 truckloads.
15. The difficulty for the applicant is that he did not provide any evidence from the waste removal companies, such as a quote or invoice. I am not prepared to accept the applicant’s hearsay evidence about the cost, when it appears the direct evidence was readily available. The applicant’s realtor’s statement is that he estimates it would take the respondent’s mover 2 more trips to remove all the debris. However, in all of these circumstances, I prefer the respondent’s moving company’s own evidence, noting it is a disinterested party. Based on the volume of goods shown in the photos, I allow \$1,200 for debris removal.

Laundry set - \$2,400 claim

16. It is undisputed the parties’ contract required the respondent seller to leave 2 laundry sets, with a washer and dryer in each set.
17. The respondent says the 2nd laundry set, located in the garage and not connected, actually belonged to the tenant who lived on the property and was removed by the

tenant. The respondent's realtor's statement says on the respondent's behalf he offered \$800 for the laundry set, as this was what he and the respondent estimated for replacement of the used laundry set.

18. In this dispute, the respondent relies on his tenant's estimate that the washer's value is \$15 to \$20 and the dryer is \$200 to \$250. The tenant stated that he bought the laundry set in 2008 when he lived at another location. He stated the washer stopped working just before he moved to the subject property. Since the respondent's property already had a functional laundry set, he stored his own in the garage and removed it when he moved out.
19. The respondent does not explain the discrepancy between the \$800 estimate and the \$270 estimate from the tenant. I find the tenant's estimate to be speculative in tone, and in any event the parties' contract required the appliances, including the laundry sets, to be in "proper working order".
20. The applicant provided a photo of the laundry set in issue, which appears to be made by Inglis. The applicant provided a copy-typed quote from Midland Appliance Ltd., for \$2,556.96 for a brand-new LG laundry set. While LG might be similar in style and appearance to the Inglis set, the significant difference is that the LG set is brand new whereas the Inglis set was used and from 2008.
21. When there is a breach of contract, the applicant is entitled to be placed in the position (with money) that he would have been in had the contract been fulfilled. This means he should be compensated for a functioning, used, laundry set. I find providing the applicant with a brand-new laundry set would be over-compensation.
22. On a judgment basis, I find the applicant is entitled to \$800, which is what the respondent's realtor valued the set at, knowing it was used.

Garage remotes - \$100 claim

23. It is undisputed that at the possession date the respondent failed to provide 2 operational garage door remotes as required by the contract.

24. The respondent submits he bought 2 “universal remotes”, and paid \$67.18 for them. The respondent still has these remotes, because he says the applicant never made arrangements to get them. The respondent however does not specifically address the applicant’s argument below that the universal remotes do not work with the garage door opener’s older “Stanley” model.
25. The applicant says he contacted 2 independent garage door companies and was told that the garage operator is an older “Stanley” model. The applicant says universal remotes are not compatible with this model, and only a “Dip Switch Garage Door Remote” is compatible. The applicant says the door companies he contacted quoted \$200 plus tax for 2 remotes. The applicant claims \$224, though in his original claim he said \$100.
26. The applicant failed to provide any supporting evidence from the door companies he said he got quotes from, which I find would have been available. However, the amount claimed is relatively modest. I accept the applicant’s essentially uncontested evidence that the universal remotes bought by the respondent did not work, which is supported by his realtor’s statement. In the absence of a quote, I allow \$100, as originally claimed.
27. In summary, I find the applicant is entitled to a total of \$2,100, being \$1,200 for debris removal, \$800 for the laundry set, and \$100 for garage remotes.
28. There is no indication the applicant has spent anything for debris removal, replacement of the laundry set or of garage remotes, so I do not order any pre-judgment interest on the amounts awarded.
29. As the applicant was partially successful in this dispute, in accordance with the Act and the tribunal’s rules I find he is entitled to reimbursement of half the \$175 paid in tribunal fees, namely \$87.50. I find the applicant is entitled to full reimbursement of \$14.69 as a dispute-related expense for serving the Dispute Notice.

ORDERS

30. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,202.19, broken down as follows:
- a. \$2,100 in damages, and
 - b. \$102.19, for \$87.50 in reimbursement for tribunal fees and \$14.69 for dispute-related expenses.
31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.
33. 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