



Civil Resolution Tribunal

Date Issued: May 14, 2019

File: SC-2018-008952

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Singh v. Chauhan et al*, 2019 BCCRT 573

B E T W E E N :

Arunpreet Singh

APPLICANT

A N D :

Satveer Chauhan and Harjot Chauhan

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Arunpreet Singh, bought a strata property from the respondents, Satveer Chauhan and Harjot Chauhan. The applicant says the respondents failed to disclose damage to the property when he viewed it and damaged the property before he gained possession, all in breach of the parties' contract. He also says the respondents left him only 1 visitor parking pass when they agreed in the contract to

provide 2. The applicant wants the respondents to pay him \$5,000 for the cost of repairing the damage and obtaining an additional visitor pass.

2. The respondents say the damage the applicant describes was present and discoverable upon a reasonable inspection at the time he viewed the property. They say they did not breach the contract and do not owe the applicant anything.
3. All parties are 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*. 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. Some of the evidence in this dispute amounts to a "he said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 9.3 (2), 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 respondents are required to pay the applicant \$5,000 to repair the damage to his home and to obtain an additional visitor parking pass.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. On September 24, 2018 the parties signed a contract of purchase and sale for the applicant to buy a strata property from the respondents (contract). The possession date was November 29, 2018. There are 2 property disclosure statements in evidence, one signed September 25, 2018 and one signed October 4, 2018. Neither of these statements refer to the damage the applicant claims in this dispute. The contract states that the property will be in substantially the same condition on the possession date as when the applicant viewed it on September 24, 2018.

12. The applicant says when he took possession of the property it was in much worse condition than it had been when he viewed it. He says the kitchen counter was cracked, there were marks and holes in the walls and doors throughout the property, the carpet was stained, and the front door lock was removed. The applicant says that either the respondents concealed this damage at the time he viewed the property and failed to disclose it to him in breach of the contract, or they caused the damage when they were moving out. He also says the respondents left him only 1 visitor parking pass despite agreeing to provide 2 in the contract.

Kitchen Counter, Walls, and Front Door Scratches

13. The applicant submitted photographs of the kitchen counter, master bedroom, front door and dining room which he says are all from the property listing. These photographs are all taken from a distance, and while none of them appear to show any damage, I cannot determine whether the relevant damage would be visible from such a distance. For comparison, the applicant submitted close-up photographs of these parts of the property taken on the possession date, which show a crack in the kitchen counter, many small black marks on the master bedroom wall, multiple large scratches and marks on the front door, and multiple holes and marks in the dining room wall. The applicant submitted an estimate from Home Depot to install a new counter for \$4,511 plus GST, and an estimate from Magic Painting Ltd. for \$2,500 plus GST to paint the walls, touch up the doors, and cover or mask any other areas.

14. The respondents say this damage existed at the time the applicant offered to buy the property.

15. I find the photographic evidence from the property listing does not establish the condition of the kitchen counter, the walls or the front door when the applicant viewed the property. There are no close-up photographs in evidence taken on or before the day the applicant viewed the property to compare to the ones the applicant took on the possession date. On the evidence before me I find the applicant has not established that the damage to the property occurred after he viewed the property. This leaves me to address the applicant's allegation that the

respondents failed to disclose the damage as required or actively concealed it when the applicant viewed the property.

16. In a real estate transaction like this one, the buyer is expected to make reasonable inquiries and conduct a reasonable inspection of the property. Unless the seller breaches the contract, commits fraud, or fails to disclose a latent defect, the buyer assumes the risk for any defects in the condition or quality of the property. This is the principle of “buyer beware” (see *Nixon v. MacIver*, 2016 BCCA 8).
17. A latent defect is one that cannot be discovered through a reasonable inspection of the property, including a defect that renders the property dangerous or unfit for living. A patent defect is one that can be discovered by conducting a reasonable inspection and making reasonable inquiries about the property. A seller is not obligated to disclose patent defects to a buyer, but they must not actively conceal them (*Cardwell v. Perthen*, 2007 BCCA 313).
18. I find the damage to the kitchen counter, walls and front door all constitute patent defects, as they would have been readily discoverable through a reasonable inspection of the property. Therefore, I find the respondents were not required to disclose this damage to the applicant. However, the contract states, “The Seller warrants that the Seller is not aware of any holes, marks, stains or other such damage either behind or under wall coverings, area carpets, mats, furniture, or appliances which are not readily visible to the Buyer.” The applicant suggests that the respondents hid the marks on the master bedroom walls behind the curtains and hid the holes in the dining room wall behind a movable closet. However, I find the evidence does not establish that the damage to the walls was behind the curtains or closet. The photographs of the damage to the walls in these rooms are zoomed in so close that I cannot determine where exactly on the walls the damage is located. I also find that even if the damage in the master bedroom was behind the curtains, a curtain is not listed in the relevant term of the contract as something that would hide damage or make it “not readily visible” to the applicant.

19. It is the applicant's responsibility to prove these claims. I find he has not done so, and I dismiss them.

Den Door and Carpets

20. The applicant submitted 2 photographs of the den door frame on the possession date which show the frame is marked and stained, and at one spot it is separating from the wall. The applicant claims the den room door will cost \$200 to replace but provided no evidence to support this claim. The applicant also did not provide any photographic evidence of the den door frame on the date he viewed the property. The respondents say the damage existed on the day the applicant viewed the property, and I find the applicant has not established otherwise.

21. The applicant also says the carpet was stained and burned on the possession date and that it cost \$189 to clean. He submitted no photographs of the carpets on the viewing date or the possession date, nor did he submit a receipt or estimate to support the amount claimed.

22. Again, it is the applicant's responsibility to prove these claims and I find he has not done so. I dismiss them.

Front Door Lock

23. The applicant says the respondents removed the front door digital lock which will cost \$500 to replace. He did not submit evidence to support the amount of this claim. The photograph he submitted of the front door on the possession date appears to show the front door handle and mechanical lock intact.

24. The respondents acknowledge that they removed the digital front door lock, but they say it was part of their leased home security system which was not included in the contract. The applicant does not dispute this.

25. The contract is silent with respect to the home security system, although it says the purchase price includes all "fixtures." The term "fixture" is not defined in the contract, but it generally refers to something that is permanently affixed to a

building. I find there is no evidence to suggest the digital front door lock was permanently affixed to the front door, or that its removal caused damage to the front door. I find the applicant has failed to establish his claim and I dismiss it.

Visitor Parking Passes

26. The applicant says the respondents were required to provide 2 visitor passes under their contract, but they provided only 1. The contract states that the purchase price includes "Visitor Passes." The respondents say the strata provides only 1 visitor parking pass to each unit, and that the applicant's realtor knew this. The applicant submitted an email dated December 3, 2018, presumably from the respondents' realtor to his realtor informing them that the property only has 1 visitor parking pass.
27. The respondents' realtor sent the email well after the parties entered into the contract, and there is no evidence before me that the applicant knew when he signed the contract that the property included only 1 visitor pass. While the contract does not explicitly state that the respondents would provide 2 visitor passes, I find it was reasonable for the applicant to rely on the plural wording of the contract and expect that he would receive 2 or more visitor parking passes. Therefore, I find the respondents breached this term contract. However, the applicant has not established that he incurred damages from the respondents' breach. He has not explained any negative consequences or monetary impact he has suffered as a result of having only 1 visitor parking pass instead of 2. While the applicant claims \$100 for 1 visitor pass, he does not explain how he arrived at this figure. I find the applicant has not proven his claim, and I dismiss it.
28. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find he is not entitled to reimbursement of his tribunal fees or dispute-related expenses.

ORDER

29. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member