



Civil Resolution Tribunal

Date Issued: June 28, 2019

File: SC-2018-008229

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Campbell v. Elford et al*, 2019 BCCRT 787

B E T W E E N :

Ondrea Campbell

APPLICANT

A N D :

Marilyn Elford and Gary George Elford

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Ondrea Campbell says the respondents Marilyn Elford and Gary George Elford wrongly removed items that were included in the contract of purchase and sale (contract) for a house she bought from them.

2. Ms. Campbell says that the Elford's agreed to switch two doors in the basement of the home at their cost, but they failed to complete the switch correctly and damaged the surrounding drywall.
3. Ms. Campbell claims a total of \$3,184.72, broken down as:
 - a. \$837.72 for LG washer and dryer pedestals,
 - b. \$79.33 for a light fixture,
 - c. \$1,107.42 for a projector,
 - d. \$1,160.25 to have the basement doors installed "properly."
4. The parties are each self-represented.

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*. 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 some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
8. 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.
9. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

10. The issue in this dispute is to what extent Ms. Campbell is entitled to compensation for items she says were included in the home purchase, but which she says the Elford's removed.

EVIDENCE AND ANALYSIS

11. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but comment on them below only to the extent needed to explain my decision.
12. On September 17, 2018, Ms. Campbell entered a contract to buy a home from Mr. and Mrs. Elford.

13. The addendum to the contract says that the Elford's will switch the basement fire door at the bottom of the stairs with the fire door leading into the suite, at their own expense. The parties agree, and I find, that by verbal agreement Ms. Campbell was to do the finishing once the doors were switched. She understood this to mean some minor paint touch ups.
14. The contract provides that the "washer, dryer", "all light fixtures" and "projector", as viewed by Ms. Campbell at the date of inspection, will be included in the sale.
15. The contract also says that all fixtures present in the home as of September 15, 2018, which I find was the date of inspection, are included in the purchase.
16. In *CMIC Mortgage Investment Corp v. Rodriguez*, 2010 BCSC 308 at paragraph 18, the British Columbia Supreme Court explained that fixtures are objects that are physically attached to the property, houses and land, by something other than their own weight. For example, an item that is screwed into a wall is considered a fixture.
17. Mr. Elford says, and I find, that listing pictures were taken of the home when it was fully furnished, in June 2018. Those photographs included a projector that belonged to the then basement tenant. The Elford's did not own that projector, nor was it present when Ms. Campbell inspected the home.
18. By September 15, 2018, when Ms. Campbell viewed the home, it contained only large furniture, pictures and a projection screen.

Pedestal-washer and pedestal

19. Prior to Ms. Campbell buying the home, the laundry area contained a washer and dryer, a pedestal on which the washer sat, with a small washer within it, and a pedestal stand for the dryer. Mr. and Mrs. Elford took the pedestal stand and the pedestal-washer when they left.
20. Mr. Elford says that he and Ms. Elford took the pedestals with them, because these cost "\$1,500 extra and we would not be able to afford them again."

21. I find that neither the washer-pedestal nor the pedestal stand were fixtures. They were not attached to the house but sitting on it with their own weight only.
22. The applicant submitted that the pedestals were attached to the washer and dryer by bolts. I infer that this is an argument that the pedestal and pedestal-washer were part of the washer and dryer, and therefore included in the contract. I disagree. A photograph was filed in evidence showing someone lifting the washer off the pedestal. As well, there was evidence that the pedestals were purchased separately, while the washer and dryer are fully functioning, intact appliances without the pedestals. If the parties had intended to include the pedestal and pedestal-washer, they could have written them into the contract specifically. I find that the pedestal and pedestal-washer were not included in the contract.
23. For these reasons, I dismiss Ms. Campbell's claim to have the pedestals returned to her, or to be compensated for them.

Projector

24. Mr. Elford says that his realtor offered Ms. Campbell the projector, not realizing it was only in the listing pictures for the home and not an item that Mr. and Mrs. Elford were willing to include on the purchase. He says "Our realtor offered us a small sum to give her our projector to seal the deal."
25. Ms. Campbell agrees there was no projector in the home on September 15, 2018. She says an \$800 Epson projector was in the listing photographs.
26. Ms. Campbell says the Elfords left an InFocus projector in the home instead. Ms. Campbell values the projector at \$80, relying on a second-hand advertisement for an InFocus projector that appears to be a different model number to the one left in the home. I do not accept this evidence as establishing the true value of the projector left in the home.
27. The Elfords say they paid \$4,000 for the projector which they left in the home.

28. The Elford's' real estate agent, KS, provided a statement saying that the parties agreed to provide a projector, by KS and her partner paying out of pocket to the Elford's, so that it could be left behind. KS did not specify the amount paid out of pocket for the projector. KS says the projector left with the home is a "good quality projector."
29. CE, the respondents' son, provided a statement saying that the projector was "added to the real estate deal", but that the projector provided was faulty and of low value.
30. The parties agree, and I find, I find that there was no projector in the home on September 15, 2018. I also find that the projector was not a fixture. As such, I find that the specific projector in the home in the listing photographs was not included in the contract.
31. The contract provided for a projector to be included in the sale. The contract does not specify the projector's value or brand. A projector was included in the sale. For these reasons, I dismiss Ms. Campbell's claim to receive a specific projector or to be compensated for it.

Light fixture

32. Mr. Elford agrees, and I find, that the light fixture was included in the house deal.
33. The photographs filed in evidence show that the light fixture was removed before the Elford's gave Ms. Campbell possession of the home.
34. Ms. Campbell filed documents showing the estimated cost of a similar light, including delivery, at \$79.33.
35. I allow Ms. Campbell's claim for the \$79.33 value of the light fixture.

Basement Door Switch

36. Mr. Elford says the doors were switched and now need “very minimal finishing”, which was Ms. Campbell’s agreed obligation.
37. Having reviewed the photographs of the doors filed in evidence by Ms. Campbell, I find that the door switch caused some damage to the drywall over and above what would be considered mere finishing. This finding is consistent with CE’s admission that the work done in switching the doors, which he completed with two others, was “a little sloppy”. One photograph shows a large drywall hole adjacent to the door, while another shows the door is not properly seated in the door space within the wall.
38. Ms. Campbell filed a quote for repairs and finishing of the doors to be conducted by a drywall contractor. The quote is for \$1,160.25 to repair drywall, fix issues with the door hanging and frame, and finishing work to the moulding.
39. Based on this receipt and the photographic evidence, I find that the Elford’s are responsible to pay the repair portion of this invoice, as distinct from the finishing work that is Ms. Campbell’s responsibility. On a judgment basis and given the scope of damage shown in the photographs, I estimate the repair portion at 65% of the total invoice, or \$754.16.
40. I order the Elford’s to pay Ms. Campbell \$754.16 for the repairs to the doors and adjacent drywall.
41. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Here, Ms. Campbell was only partly successful, relative to her monetary claim of over \$3,000.

42. Ms. Campbell spent \$175 in tribunal fees and \$619.14 in dispute-related expenses for registered mail, courier costs, mileage to try to serve the Dispute Notice personally and two attempts to serve the Dispute Notice by process server. I find that her dispute-related expenses were supported by receipts but that there were other, less expensive, ways she could have tried to serve the Dispute Notice. Given that, and Ms. Campbell's partial success I find that she is entitled to reimbursement of 50% of her tribunal fees (\$87.50) and dispute-related expenses (\$309.57), for a total of \$397.07.

ORDERS

43. Within 30 days of the date of this order, I order Mr. and Mrs. Elford to pay Ms. Campbell a total of \$1,241.17, broken down as follows:

- a. \$833.49 for the door and drywall repairs and the light fixture,
- b. \$10.61 in pre-judgment interest under the Court Order Interest Act, calculated from the date of possession, October 11, 2018, to the date of this decision, and
- c. \$397.07 for \$87.50, being 50% of her tribunal fees and \$309.57 being 50% of her dispute-related expenses.

44. 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.

45. 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.

Julie K. Gibson, Tribunal Member