



Civil Resolution Tribunal

Date Issued: July 26, 2019

File: SC-2019-002696

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Adams v. Lloyd*, 2019 BCCRT 913

BETWEEN:

MORGAN ADAMS

APPLICANT

AND:

LEE LLOYD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a real estate transaction. The applicant, Morgan Adams, says that when he took possession of the home, the walls were damaged. He seeks compensation of \$4,800 to repair and repaint all the walls. The respondent, Lee

Lloyd, says he fulfilled his part of the contract and is not responsible for the amount claimed by the applicant.

2. The parties are both self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an issue.
5. 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.
6. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted by section 118 of the Act:
 - 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

- 7. The issue in this dispute is whether the respondent is responsible for paying \$4,800 to have the applicant's walls repaired.

EVIDENCE AND ANALYSIS

- 8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 9. The parties entered into a contract of purchase and sale for the respondent's home on August 10, 2018. The contract stated that the property would be in substantially the same condition as it was when the applicant viewed it on August 10, 2018. The contract also contained a section in which the seller warranted that "there is no damage to drywall which is behind any wall coverings, wall hangings, or window coverings". The seller further warranted that "all holes in walls will be filled and painted". The parties agree the last term was added due to the numerous wall hangings the respondent had prior to the sale.
- 10. The applicant says when he took possession on September 30, 2018, holes in the walls were poorly patched and either painted incorrectly or not painted at all. It is undisputed that upon discovering the condition of the walls, the applicant contacted the respondent's realtor, who stated he would cover 4 hours of labour from a contract painter. The applicant says the painter attended the home and stated he could not repair the damage in 4 hours. The respondent says the applicant turned the painter away as the applicant wanted the whole house painted. I find nothing turns on the disagreement between the parties as to why the realtor's painter did

not take the repair job. The applicant hired a third party painter, TP, who fixed the walls and repainted the home's interior. The applicant seeks reimbursement of this cost.

11. The respondent says he fully complied with his obligations under the contract. He says the holes were filled with putty and were either covered with the closest matching paint he had on hand, or were left unpainted as the putty closely matched the wall's colour. In any event, he says the applicant started repainting the home before he was aware of the applicant's complaints, and therefore is not responsible to reimburse the applicant.
12. The evidence before me contains images of the home that shed some light on the home's condition before and after the sale. A copy of the professional photographs used in the listing show numerous wall hangings and photos affixed to several of the walls. Not all areas of the home are featured in the photos.
13. The applicant provided a number of images and video clips showing the damage to the walls. This damage includes over and under-filled holes in the wall that appear to remain un-sanded and un-painted, as well as holes that were patched and painted with completely different colours than on the rest of the wall. The patches are extremely noticeable and cover large areas of numerous walls. I find the number and size of the patches throughout the home is significant.
14. Based on the evidence before me, I am satisfied the respondent breached the contract by admittingly failing to paint several of the patched holes. I also find the respondent breached the contract because the patching and painting of the holes was done in such a way that the home was not left in substantially the same condition as when viewed by the applicant.
15. In assessing the applicant's damages, the painter TP provided a statement that the cost to repair the damage left by the respondent was \$3,000. The applicant admits that as he had to repair the damage, he decided to have the whole house painted at

an additional cost of \$1,800. The applicant seeks the full \$4,800 because he says the respondent would not compromise and so he had to start this dispute.

16. I find the applicant is entitled to reimbursement of \$3,000, the cost to remedy the damage done to the walls by the respondent. The applicant is not entitled to the additional \$1,800 as I find it was his decision to paint the rest of the house, and was not necessary for repair of the damaged walls. In other words, the applicant is not entitled to be put in a better position than he would have been in had the respondent fulfilled the contract. The applicant is also entitled to pre-judgment interest on the \$3,000 under the *Court Order Interest Act* (COIA) calculated from October 6, 2018, the approximate date the repairs were finished.
17. Under section 49 of the Act, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was successful, I find that he is entitled to reimbursement of the \$175 he paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

18. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$3,218.55, broken down as follows:
 - a. \$3,000.00 for reimbursement for wall repairs,
 - b. \$43.55 in pre-judgment interest under the COIA, and
 - c. \$175.00 in tribunal fees.
19. The applicant is also entitled to post-judgment interest under the COIA.
20. 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.

21. 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.

Andrea Ritchie, Vice Chair