



Civil Resolution Tribunal

Date Issued: August 22, 2019

File: SC-2019-001041

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hansson et al v. Siebenga et al*, 2019 BCCRT 998

B E T W E E N :

MAI HANSSON and CHRISTOPHER HANSSON

APPLICANTS

A N D :

JOEL SIEBENGA, REYNOLD SIEBENGA, and BARBARA SIEBENGA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the purchase and sale of a residence. The applicants, MAI HANSSON and CHRISTOPHER HANSSON, were the buyers. The respondents, JOEL SIEBENGA, REYNOLD SIEBENGA, and BARBARA SIEBENGA, were the sellers. The applicants say the KitchenAid range was not working on the possession

date, contrary to the parties' agreement. The applicants claim \$2,683.59 for a replacement range.

2. The respondents say replacing the whole range is unnecessary and that they had offered \$600 (and later, \$800) to cover the necessary replacement parts. Alternatively, they say if a replacement range is required, one can be obtained for \$950 or \$1,150. The applicants declined the respondents' offer, having already ordered the replacement for \$2,700. The applicants also say the respondents' chosen range is not comparable. Joel Siebenga says that the range worked when he vacated the house on January 23, 2019, 2 days before the respondents took possession of it.
3. The applicants are represented by Mai Hansson. The respondents are represented by Joel Siebenga, the son of Reynold and Barbara Siebenga.

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* (CRTA). 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.

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 do one or more of the following where permitted under section 118 of the CRTA: 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 to what extent, if any, the applicant buyers are entitled to reimbursement for the cost of a replacement kitchen range, on the basis the respondents failed to provide a working range in the house sale.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicants to prove their claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. The essential facts are mostly undisputed. The applicants made their offer to buy the respondents' home on November 6, 2018. I note Joel Siebenga lived in the home. His parents, the respondents Reynold and Barbara Siebenga, lived elsewhere and have said they do not have any knowledge or details about the dispute.
11. The applicants had an inspection done on November 16, 2018. The inspection report concluded all appliances were in working order.

12. The parties' contract states that all appliances must be "in good working order" on the January 25, 2019 possession date. The contract also states the home must be in the same condition it was in on November 4, 2018, the viewing date.
13. The parties agree that on January 25, 2019 the applicants took possession of the home and discovered that the range did not work, and advised the respondents' realtor. However, Mr. Siebenga says it was working when he vacated the property on January 23 and that "for all I know" the buyers were responsible for it not working. As discussed further below, I find it unlikely the applicant buyers broke the range essentially immediately after moving in.
14. On January 28, 2019, the applicants' appliance technician assessed the range. The technician found it needed a new control panel and touch pad. While the control panel was available for \$600, the touch pad was discontinued. The applicants say the technician said without a new touch pad there was no point to getting the replacement control panel, as it "won't work without both parts".
15. Joel Siebenga says he had located replacement parts. The applicants say Mr. Siebenga found only the replacement control panel. The applicants' own search produced the same results: only a control panel, not a touch pad.
16. On January 30, 2019, the applicants ordered a new Kitchenaid range, with a total cost of \$2,683.59. The applicants assert it is comparable to the specifications and features of the range sold with the house.
17. Mr. Siebenga submits the contract required only good working condition, not new. This is true. The difficulty here is that the range was not in good working order, because the touch pad and control panel were not working on the possession date. Apart from the applicants' evidence, this is shown on a January 27, 2019 invoice from Dawn Appliance Services, which also says the touch pad is no longer available. Given the applicants told the respondents' realtor on the possession date (or at least within 2 days) that the range was not working, I find it more likely that it was broken before the applicants took possession rather than their doing something

to cause the range to break. I find the touch pad and control panel, the range's digital display, are significant features of the range's function. I accept that without them the range's oven cannot be used properly. I find this means the respondents breached the contract to provide the range appliance in good working condition.

18. So, the next step is to assess the applicants' damages. The applicants are entitled to be put in the position they would have been in if the contract had been fulfilled. If replacement parts had been reasonably obtainable, then that would have been the reasonable solution. While Mr. Siebenga submits that repairing the range was not investigated thoroughly, he has not provided evidence that both the touch pad and the control panel were replaceable. The applicants' evidence is that a replacement touch pad was not available, as shown on the Dawn Appliance Services invoice. On balance, I find replacing the range was reasonable.
19. As referenced above, the applicants claim \$2,683.59, which is what they paid Trail Appliances on January 30, 2019 for a "Kitchenaid Range SS", Model YKSEB900ESS. I infer "SS" refers to stainless steel finish. The original range was a Kitchenaid model with a stainless steel front, and what appears to be a black induction cooktop. The original range's model number is YKESC308LS0. I cannot tell from the 2 model numbers how similar they are.
20. Mr. Siebenga argues that a Whirlpool 30" range was available from Trail Appliances for \$1,150, and that because the house was 14 years old this is a comparable appliance. I do not agree that the house's age is necessarily relevant. The range sold with the house was a stainless steel Kitchenaid range. The applicants bought a replacement stainless steel Kitchenaid range. There is no evidence before me to suggest the replacement range was a higher end model than the one sold with the house. While I could not see the Whirlpool evidence item uploaded by Barbara Siebenga, I find it unnecessary for me to see it. I say this because the respondents had refused to do more than offer a \$600 payment after a week of knowing the range was broken. The evidence about the Whirlpool range appears to have been provided after this tribunal proceeding started, as I note originally the respondents

said a replacement range could be had for \$950. After a week, I find the applicants were entitled to replace the range with a similar Kitchenaid model given the importance of having a functioning stove. I reject the suggestion that the onus was on them to scour appliance stores for possible cheaper alternatives when they had located a range of the same make and style as the broken one. In summary, the applicants were entitled to a range in good working order, and one that is comparable in style to the broken one. In this instance, I find that means the applicants were entitled to a new range.

21. I find the applicants are entitled to an order for \$2,683.59. They are also entitled to reimbursement of \$70 for the Dawn Appliance Service invoice plus \$25 for disposal of the broken range. They are entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on these amounts, from January 30, 2019, a date I consider reasonable in the circumstances. This equals \$30.28.
22. Under the CRTA and the tribunal's rules, the successful applicant is usually entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. The applicants were successful and so I order reimbursement of the \$125 in paid tribunal fees. The applicants also claim \$35.91 for registered mail expenses for serving the Dispute Notice on the 3 respondents, which I allow as I find this was a reasonable expense.

ORDERS

23. Within 14 days of this decision, I order the respondents to pay the applicants a total of \$2,933.87, broken down as follows:
 - a. \$2,778.59 in damages, and
 - b. \$30.28 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
24. The applicants are entitled to post-judgment interest, as applicable.

25. Under section 48 of the CRTA, 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.
26. Under section 58.1 of the CRTA, 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