



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lu et al v. Li*, 2019 BCCRT 1244

B E T W E E N :

QIAN LU and ALLEN ENGST

APPLICANTS

A N D :

ELIZABETH YE LI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicants, Qian Lu and Allen Engst, purchased a townhouse from the respondent Elizabeth Ye Li. The applicants say that the respondent breached their purchase agreement by failing to clean and repair specified items in the townhouse.

The applicants want the respondent to pay \$3,298.75 to address deficiencies in the townhouse. The respondent says that she met the terms of the agreement and denies that she owes the applicants any money.

2. The parties are 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* (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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 under section 118 of the CRTA:
 - 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 breached the purchase agreement and is responsible for the \$3,298.75 for deficiencies.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. Ms. Lu and Ms. Li entered into a Contract of Purchase and Sale dated February 24, 2019. Although not a party to the contract, Mr. Engst is an owner of the townhouse. The contract referenced a Property Disclosure Statement completed by the respondent, but this document is not in the evidence before me.
10. The contract stated that the entire property would be professionally cleaned and the carpet steam cleaned before the possession date. It also stated that the property and all included items would be in substantially the same condition at the possession date as when viewed by the applicants on February 16, 2019.
11. After an inspection, Ms. Lu and Ms. Li agreed to a March 3, 2019 addendum to the contract. In this addendum, the respondent warranted that all electronic appliances and lights were in good working condition, and that all burnt out lights would be replaced with functional bulbs. In the addendum, the respondent also agreed to repair items listed in a home inspection summary, as follows: the bathroom ventilation fan covers would be cleaned and the fans lubricated to reduce noise when in operation; the sink in the master bathroom would be unclogged to address "slower than normal drainage speed"; the ceiling light cover in the garage would be restored. In addition, the respondent agreed to remove all wall stickers, thoroughly clean the property, and steam clean the carpet before the possession date.

12. The applicants say that, when they took possession of the townhouse, they discovered that the townhouse and the carpets had not been cleaned thoroughly, the removal of wall stickers had caused damage to the drywall, stickers on the ceiling had not been removed, and there were other areas of damage to the walls. The applicants also state that the bathroom fans need to be replaced, the covers for the garage lights were missing, there were burned out light bulbs, and the master bathroom sink was not draining properly. The applicants say the respondent breached their contract, and want her to reimburse them \$273.00 for carpet cleaning, \$2,325.75 for wall repair and painting, \$120.00 for light fixtures, \$150.00 for plumbing repairs, and \$430.00 for replacement bathroom fans, for a total of \$3,298.75.
13. The respondent disagrees with the applicants' position. According to the respondent, the applicants are claiming things in their dispute that were not part of the negotiations or contract, and she would not have agreed to the purchase price had these items been included.
14. The parties' submissions placed emphasis on the timing of the transaction and the personal reasons behind it. While I acknowledge the importance of this issue to the parties, I find it is not relevant to my analysis. I will address each of the applicants' claims in turn.

Cleaning

15. The applicants say that there was a smoky odour, oily cardboard in the kitchen cupboards, and mouse droppings on top of the kitchen cabinets when they took possession of the townhouse. They also say that there was dust on one side of the laundry equipment and unspecified garbage left behind. The respondent says she hired a cleaner who spent an entire day at the townhouse. The respondent provided a handwritten receipt that she says is from her cleaner. However, as this document was in a language other than English and no translation was provided, I am unable to confirm its contents. Given my conclusion below, I find that nothing turns on this.

16. The contract stated that the entire property would be professionally cleaned. Although video footage provided by the respondent shows what appears to be a clean townhouse, images provided by the applicants show that there were some areas that were not left in clean condition. I am satisfied that the evidence establishes that the respondent did not clean the entire property as required by the contract. However, as the applicants did not ask for them, I make no order for damages for this claim.

Carpets

17. The contract required that the carpets in the townhouse be steam cleaned. The applicants say that the carpets felt dusty and there were impressions in the carpet where furniture had been. These impressions were no longer present after they arranged for their own steam cleaning, which the applicants say cost \$273.00 (\$260.00 plus 5% GST). The respondent says the carpets were cleaned and provided a May 24, 2019 receipt from a cleaning company.

18. I am satisfied that the parties' contract required all of the carpets to be cleaned, not simply the areas that were not covered by furniture. Images provided by the applicants support their submission that there were furniture impressions present on the carpets when they took possession, which disappeared after their own steam cleaning. I find that it is more likely than not that furniture was still in the home at the time of the respondent's cleaning, with the result that the carpets were not cleaned in their entirety.

19. I find that the applicants are entitled to reimbursement of the cost of their carpet cleaning. Although the applicants claimed \$273.00, their receipt is for only \$150.00. It would appear that this discrepancy arises from the difference between the quoted and actual cost of the service. I find that the applicants are entitled to \$150.00 for carpet cleaning.

Wall Damage

20. Video and still images of the townhouse show that the respondent had a large number of stickers and decals of various sizes on the walls in the bedroom areas and star decals on the ceilings. The addendum says the respondent agreed to remove the wall decals, but the applicants say that the walls were damaged during the process and the respondent did not repair the damage. The applicants also say that when they took possession, there were about 60 areas of new damage, including damage on the walls in the stairway and garage, damage in 2 areas from the removal of child safety gates, and other scrapes and gouges in the walls that the respondent failed to repair.
21. A translation of an exchange of WeChat messages between Ms. Lu and her real estate agent confirm that the respondent had advised them before the possession date that the sticker removal was causing damage to the walls. The respondent says she did not want to remove the stickers as “this was not a deficiency mentioned in the house inspection report”, but she agreed to remove the stickers “for goodwill”. The respondent says she did not agree to repair any resulting damages. According to the respondent, there were less than 10 areas of damage, not the 60 claimed by the applicants. The respondent’s position is that the townhouse was not new and she should not have to pay for the applicants to have the townhouse painted.
22. The evidence shows that the townhouse was not freshly painted and there were some imperfections on the wall surfaces at the time of the applicants’ first viewing of the property. Video footage from the applicants shows the presence of scuffs, scrapes, and other markings on some of the walls. After the applicants took possession of the townhome, the evidence shows several small areas of drywall damage from the sticker removal in the bedrooms, as well as from the removal of child gates. More damage is present in the garage, where the removal of a shelving unit left multiple holes. While these holes appear to have been patched in some fashion, the damage was extensive.

23. Although some of the damage identified by the applicants was present before their purchase of the townhome, I am satisfied that some of the demonstrated damage is new. Whether or not the respondent wished to remove all stickers from the townhouse walls, it was a term of the contract addendum that she do so. She also had an obligation to leave the townhome in substantially the same condition as it was on the date of the viewing. I am satisfied that the damage to the drywall from the removal of the stickers, the child gates, and the garage shelving left those areas in a different condition, and that the respondent had an obligation to repair them.
24. The applicants provided a quote from a painter that estimated a cost of \$2,325.75 for repairing the areas of damage and re-painting the walls in the master bedroom and bathroom, the other bedrooms, the stairways, the living room, the kitchen and 2 walls in the garage. The applicants say that the painter advised them that the walls in the master bedroom and bathroom would need to be sanded and repainted to remove the smoky smell. This is not documented in the quote, and I find that the applicants have not proven that re-painting the master bedroom and bathroom is necessary to address an odour left by the respondents.
25. The painter's quote also does not address the possibility that the damage on the interior walls could be addressed with a touch-up to existing paint rather than painting the entire wall. The damage to the 2 garage walls covers most of the walls' surface area, and I am satisfied that those walls will need to be repainted. However, I am not satisfied that the evidence before me supports the conclusion that the areas of damage in the remaining rooms was extensive enough that repainting would be required to remedy the damage.
26. The parties' contract did not contemplate the applicants receiving a newly painted townhouse. If I were to award the applicants the entire cost of repainting their townhouse, I find that it would place the applicants in a better position than they would have been had the respondent complied with the contract. Although they are not entitled to the entire amount of the painting costs they claimed, on a judgment

basis, I find that the respondent must pay the applicants \$500 of the claimed repair costs.

Bathroom Fans

27. The applicants say the respondent failed to repair the bathroom fans, and that they now need to be replaced at a cost of \$430 (for the new fans and installation by an electrician). The respondent says that she met her obligations about the fans, and the noise level is acceptable.
28. The parties' contract did not require the respondent to repair or replace the bathroom fans, but rather to clean and lubricate them to "reduce noise when in operation". Both parties provided video footage that demonstrates the sound of the fans. However, this footage was taken on or after the possession date, and does not show the noise level as compared to the level on the date of the inspection.
29. I find that the evidence before me does not establish that the respondent failed to meet her contractual obligations about the bathroom fans. I dismiss this claim.

Light Bulbs and Fixtures

30. The applicants say the respondent breached the contract by failing to replace a burned out light bulb or the missing covers from the garage fixtures. According to the applicants, it will cost \$120.00 at Home Depot to obtain the same quality of covers as the ones that went missing. The applicants did not provide a quote or other documentation of the expected cost of these fixtures. The respondent says she is not sure that the bulb burned out before the possession date, and that one of her contractors may have taken off the fixture covers and forgotten to replace them. The respondent also questions the amount claimed by the applicants, and says she can find light fixtures for less than \$30.
31. The applicants did not provide evidence of the burned out bulb and missing light covers other than their own reports. I find that the evidence before me does not

establish the nature of these items or the appropriate replacement cost. As the applicants have not proven this claim, I dismiss it.

Master Bathroom Sink

32. The contract addendum required that the respondent unclog the sink in the master bathroom due to “slower than normal drainage speed”. The applicants say the respondent failed to address this issue, but the respondent says that the sink was unclogged and was draining fine on the possession date.
33. Video footage provided by the respondent shows water draining from sinks in 2 bathrooms in the townhouse on the date of possession. Although the inspection report references the drainage in the sink being “kind of slow”, the evidence before me does not contain any indication of what that means. Without a point of comparison, I cannot conclude that the evidence establishes that the respondent failed to address the sink drainage or that the sink was not unclogged prior to the possession date. The fact that the applicants later discovered a clog in another sink in the townhouse does not alter my conclusion. I dismiss this claim.
34. In summary, I find that the applicants are entitled to \$650 in damages for the respondent’s breach of the contract. The applicants are also entitled to pre-judgment interest of \$4.97 under the *Court Order Interest Act*.
35. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicants claimed for the reimbursement of \$175.00 in tribunal fees and dispute-related expenses of \$283.50 for the translation of evidence. As the applicants were partially successful, I find that they are entitled to reimbursement of half of these amounts, for a total of \$229.25.

ORDERS

36. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$884.22, broken down as follows:

- a. \$650.00 in damages for breach of the contract,
- b. \$4.97 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$229.25 for half of the claimed tribunal fees and dispute-related expenses.

37. The remainder of the applicants' claims are dismissed.

38. The applicants are entitled to post-judgment interest, as applicable.

39. 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.

40. 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.

Lynn Scrivener, Tribunal Member