



Civil Resolution Tribunal

Date Issued: November 6, 2019

File: SC-2019-003296

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crossley et al v. Homesafe Inspections Ltd.*, 2019 BCCRT 1264

B E T W E E N :

VALERIE CROSSLEY and ANTHONY CROSSLEY

APPLICANTS

A N D :

HOMESAFE INSPECTIONS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about an allegedly inadequate home inspection.
2. The applicants, Valerie and Anthony Crossley, say the respondent, Homesafe Inspections Ltd., failed to adhere to professional standards and failed to identify

costly problems when conducting a pre-purchase home inspection for the applicants in July 2018. They also say the respondent overcharged them.

3. The applicants seek a refund of the home inspection invoice (\$670.95), plus damages for required repairs, which they say exceeds \$5,000. However, they have reduced their total claim to \$5,000, which is the monetary limit for small claims.
4. The applicants are represented by Valerie Crossley. The respondent is represented by Rod MacNeil, who conducted the home inspection. I infer that Mr. MacNeil is the respondent's employee or principal.

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* (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.
6. 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.
7. 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.
8. 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

9. The issue in this dispute whether the respondent's home inspection was negligent or breached the parties' contract, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicants must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

Events

11. The following facts and chronology are not in dispute.
12. On July 4, 2018, the applicants retained the respondent to conduct a pre-purchase home inspection.
13. On July 5, 2018, Mr. MacNeil conducted the inspection and the Crossleys paid the \$670.95 invoice. Mr. MacNeil is a licensed home inspector with 30 years' experience in the real estate industry.
14. On July 6, 2018, Mr. MacNeil emailed the applicants his 23-page inspection report (report).
15. On July 9, 2018, the applicants emailed Mr. MacNeil, saying that it was important that they were clear on his findings so that they could engage in further negotiations with the owners or undertake further investigations. They sent 4 pages of questions organized under 11 headings for different rooms or features of the home. They

asked Mr. MacNeil to either clarify by email or update the report. In reply, Mr. MacNeil told the applicants that he could not alter the report, but he answered most of their questions.

16. On July 14, 2018, the applicants emailed Mr. MacNeil, again seeking an amended report and asking additional questions. Mr. MacNeil refused to amend the report but offered a full refund or a second inspection.
17. The applicants chose the second inspection, which took place on July 17, 2018. The applicants removed all conditions from their purchase offer later that day. There was apparently no second inspection report.
18. On August 28, 2018, the applicants took possession of the home.
19. On September 1, 2018, the applicants emailed Mr. MacNeil, reiterated their disappointment with the inspections and report, and asked for a refund. Mr. MacNeil agreed to a full refund. The next day, the applicants discovered issues with their kitchen cabinets and advised Mr. MacNeil that a refund was no longer sufficient. Mr. MacNeil's insurer became involved and a refund was not provided.

The parties' positions

20. The applicants maintain that Mr. MacNeil failed to identify several issues with the home in his inspection and report. They say that those issues will cost them significantly more than they could have anticipated. They also say that they missed an opportunity to negotiate a lower purchase price with the vendor.
21. Although the applicants do not use these words, I find that their claim is about negligent misrepresentation. In particular, they say Mr. MacNeil misrepresented the condition of various components of the home, most importantly the kitchen cabinets, and failed to note issues such as dangling electrical wires in the kitchen and a fireplace that would not ignite. They also have a potential claim based on breach of contract, as they say the respondent did not provide the services it agreed to provide.

22. The applicants say that after moving in, they noticed paint peeling and cracking on the kitchen cabinet doors. They sought opinions on repair of the cabinets from 4 local cabinet makers. They say that all 4 concurred that the peeling and cracks were caused unsealed horizontal seams that, through normal use, allowed moisture to permeate the wood. The respondent did not dispute, and I find, that the cabinet doors and drawer fronts could not simply be repainted and had to be replaced.
23. The respondent says that the applicants have not shown that the inspection failed to adhere to professional standards. The respondent also says that kitchen cabinetry is cosmetic and the parties' written agreement, titled 'service contract', states that the cosmetics of the house, including 'cabinets & countertops' are left to the buyer's judgment. Additionally, the service contract says trapped or concealed moisture in any area of the house are outside the scope of the review.
24. The parties made extensive submissions about whether the terms and conditions in the service contract purporting to limit the scope of the report were binding. The only copy of the service contract is unsigned, and the parties disagree about the extent to which the applicants were able to review it, other than providing their name and address on page 1. I find that I can decide this dispute without determining whether those limitations applied, because even if they did not, it would not change my finding that the respondent was not negligent. My reasons follow.

Analysis: Negligent misrepresentation

25. BC courts have consistently held that there are common sense limits on what one can reasonably expect from a relatively brief and inexpensive visual inspection undertaken by someone who has no right to interfere with the property as it not owned by the person requesting the inspection (*Brownjohn v. Pillar to Post*, 2003 BCPC 2). That said, courts have also acknowledged that persons who hold themselves out as professionals know that they invite reliance, and create a risk of harm if they fail to meet the appropriate standard of care. Reliance that can reasonably be placed on a home inspection must be proportionate to the cost of the inspection, which in this case was \$670.95. It is also relevant that the applicants say

they have had 4 previous home inspections in the past 12 years and are familiar with the purposes and limitations of a home inspection.

26. The required elements of a claim for negligent misrepresentation are that 1) the respondent owed the applicant a duty of care because of a special relationship, 2) the respondent's representations were false, inaccurate or misleading, 3) the representations were made negligently, 4) the applicant relied on the representations, and 5) the applicant consequently suffered damages: *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC).
27. There is no question that a special relationship existed such that the respondent owed the applicants a duty of care in the course of the home inspection.
28. The most serious alleged misrepresentation is the inspection report's statement that rated the kitchen cabinets as 'acceptable' with no documentation of water damage. 'Acceptable' is defined in the report as "functional with no obvious signs of defect."
29. The third requirement, that the representation was made negligently, is determined by asking whether the home inspector failed to meet the standard of care expected of a reasonably prudent home inspector in accordance with applicable standards at that time (*Calder & Zwaal v. Jones et al*, 2010 BCPC 77, para 39).
30. In most cases involving a claim of professional negligence, expert evidence is required to prove the professional standard of care. However, some cases have found that the standard of care owed by a home inspector is simply that of a reasonable visual inspection done in accordance with the relevant provincial standards (see *Biggs v. Harris*, [1999] O.J. No 4831, cited in *Calder*, above).
31. The applicants rely on the Applied Science Technologists & Technicians of British Columbia (ASTTBC) Standards of Inspection. Those standards say that property inspectors are required, in a home's interior, to "observe the condition of permanently installed counters and cabinets." The applicants also rely on materials from the Home Inspectors Association of British Columbia (HIABC), which say the inspector will inspect "a representative number of installed cabinets."

32. Although the service contract said cabinets and countertops are cosmetic and left to the buyer's judgment, there is no dispute that the inspection report described the cabinets. Therefore, even if that scope-limiting term was accepted by the applicants, I find that the report overrode it by describing the condition of the cabinets in a way that the applicants might rely on. The question then is whether, by reporting the cabinets as 'acceptable', Mr. MacNeil breached professional standards.
33. The ASTTBC standards note that an inspection is general in nature and not that of a specialist. It is a visual, non-invasive inspection by direct observation only. HIABC says inspectors are not required to identify the causes of observed conditions, identify the condition of components that contain latent defects, or identify every problem that exists. HIABC also says that inspectors are not required to inspect paint, wallpaper or other finish treatments. I am satisfied that the applicants were aware of these limitations given their prior experience with inspections.
34. The applicants retained the services of a cabinet maker, Marty Roberts, who attended their home and provided the following evidence:

Based on my years of experience in this area [...] the cabinet doors and facing were damaged by moisture seeping into the seams and inadequate finishing to withstand moisture issues through normal use. This was evident to me based upon the pattern of blistering and peeling of paint. The minimum repair would be replacement of the doors and refacing the cabinet boxes with materials of improved design and finishing.

35. The applicants' photos show 2 floor-level cabinet doors with minor chipped and bubbling paint, and 1 upper cabinet door that is slightly misaligned. I am not persuaded that these issues affecting 3 cabinets should have caused Mr. MacNeil to rate the cabinets on the whole as something other than acceptable. 'Acceptable' as defined in the report simply means functional with no obvious signs of defect. The alternatives were 'marginal', which meant not fully functional and requires repair or servicing, or 'defective', which meant unable to perform its intended function. The applicants did not suggest that the kitchen cabinets were not fully

functional. Rather, the applicants wanted to repaint the cabinets and found that doing so was not recommended because of moisture damage.

36. Should the chipped and bubbling paint on two floor-level cabinet doors have caused Mr. MacNeil to turn his mind to moisture penetration issues and flag the issue for the applicants so they could retain a specialist? Mr. MacNeil did not purport to have any expertise in cabinet doors. Although the respondent's website referred to an infrared imaging system to detect moisture and other issues, it is not clear whether that system would be applied to cabinets. As well, the applicants did not say that they visited the website before contracting with the respondent, so there is no evidence they relied on that information. Overall, I am not persuaded that moisture damage was apparent on a visual inspection. Perhaps it was to MR, who had years of specialized experience in cabinets. Without more, such as expert evidence from a home inspector, I am unable to conclude that Mr. MacNeil ought to have rated the cabinets as anything other than acceptable as he did.
37. I find that the applicants have not proven, on a balance of probabilities, that Mr. MacNeil should have recognized the evidence of water damage in the cabinets. It follows that the applicants have not proven that Mr. MacNeil failed to meet the standard of care of a reasonably prudent home inspector in these circumstances. I dismiss the claim for damages related to the cabinets.
38. I turn now to other potential misrepresentations that the applicants raised, including a faucet that contacted a window ledge, exposed wires indicating absent under-counter lighting, other exposed wires, and a non-working fireplace remote.
39. As stated in *Brownjohn* at paragraph 17, the purpose of a home inspection is to provide expert advice about *substantial* deficiencies of a magnitude that reasonably can be expected to have some bearing upon the purchaser's decision-making regarding whether to purchase the property or negotiate a variation in price. Considering invoices that the applicants submitted and the relative cost of addressing these issues, I find that none of the above deficiencies were of such a

magnitude that they can reasonably be expected to have affected the applicants' decision to purchase the home or negotiate on price.

Analysis: Breach of contract

40. Although I have found that the applicants have failed to establish that the respondent was negligent, for the reasons that follow, I find that the applicants are entitled to a refund of the \$670.95 they paid the respondent for the inspection.
41. After receiving the inspection report, the applicants made it clear to Mr. MacNeil that they wanted amendments made to the report. He told them that “the inspection report cannot be altered once sent,” implying that he was bound by some kind of authority. He later acknowledged that it was simply his policy not to alter reports. There was no evidence that the applicants were previously advised of this policy. According to Consumer Protection BC (the regulatory body governing home inspectors), clients have the right to ask their home inspector to make corrections. This does not mean the inspector must make any change the client requests, but I find it does mean the inspector must consider reasonable requests for changes.
42. I find there were valid reasons to consider amending the report here. The report identified nothing in the home as ‘marginal’ or ‘defective’ – everything was rated ‘acceptable’. The applicants identified a number of areas where it would have been beneficial for Mr. MacNeil to provide more details – for example, he acknowledged that he could not view the garage floor because the garage was full of the owner’s belongings, yet he rated the garage floor as ‘acceptable’ rather than the available category of ‘not inspected’. The applicants also asked if concerns that Mr. MacNeil raised verbally, such as the water heater installation, could be noted in the report so they could discuss with the owners about who would pay for a plumber to check the installation. Mr. MacNeil did not address these and other concerns.
43. It is also undisputed that Mr. MacNeil started his July 5, 2018 inspection 30 minutes before the applicants arrived, which I find was a breach of the contract. Page 1 of

the service contract says the inspector cannot start the inspection until the clients have read and understood the contract.

44. I also note that the inspection report does not include the inspector's licence number, which is mandatory under section 13 of the *Home Inspector Licensing Regulation*.
45. For the foregoing reasons, I allow the claim for a refund of \$670.95. I dismiss the applicants' remaining claims.
46. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$670.95 from the July 5, 2018 date of payment to the date of this decision. This equals \$15.85.
47. 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 were partially successful. I find the applicants are entitled to reimbursement of half their \$175 tribunal fees and half their \$11.50 dispute-related expense for a registry search. Together, this equals \$93.25.

ORDERS

48. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$780.05, broken down as follows:
 - a. \$670.95 as a refund for the inspection,
 - b. \$15.85 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$93.25, for \$87.50 in tribunal fees and \$5.75 in dispute-related expenses.
49. The applicants are entitled to post-judgment interest, as applicable.
50. The applicants' remaining claims are dismissed.

51. 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.
52. 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.

Micah Carmody, Tribunal Member