



Civil Resolution Tribunal

Date Issued: December 31, 2019

File: SC-2019-002489

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Klyne v. Chau*, 2019 BCCRT 1450

B E T W E E N :

JESSICA KLYNE

APPLICANT

A N D :

Chi Vi Chau and Ka Yin Karen So

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about the purchase and sale of a home, and whether a range hood that operated loudly was in “working order” as required by the sale agreement.
2. The applicant, Jessica Klyne, purchased a condominium from the respondents, Chi Vi Chau and Ka Yin Karen So. The applicant says the range hood was not in

working order on the possession date, contrary to the parties' agreement. The applicant claims \$1,528.60 for a replacement range hood.

3. The respondents say the range hood might sound louder than normal, but it worked. They say they did not promise that the appliances were new or perfect.
4. The applicant and both respondents are 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* (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: order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. whether the respondents breached the parties' contract by failing to ensure the range hood was in working order on the possession date, and
 - b. if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove her 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.
11. On December 18, 2018, the parties executed a contract of purchase and sale (contract). In the contract, the respondent seller warranted that all appliances and built-in items would be "clean and in working order" on the possession date. There is no dispute that the range hood was included in the appliances and built-in items.
12. The applicant took possession on March 6, 2019. She says on that date the range hood was neither clean nor in working order. She says it was caked in oil and there was something wrong with the motor, as it was very loud when running on higher speeds. The cooktop was also broken, but the respondent agreed that the cooktop was broken and paid for the repair, so the cooktop is not part of this dispute.
13. The applicant hired an appliance repair company to repair both the cooktop and the range hood. She says the company advised that the range hood required a new motor, but it was unable to source the motor because it was no longer in production. She says that a second appliance repair company was also unable to source the motor. I accept her evidence that she could not find a replacement motor and that, in order to address the noise issue, she needed to replace the entire range hood.
14. The respondents say that the range hood worked. It turned on and off, and all the buttons from low to high worked. The lights also worked. The respondents concede

that the motor “might [have] sounded louder than normal,” but they say it was in the same condition as when they moved in 5 years earlier.

15. The applicant says the range hood was not in working order and there was “clearly something wrong with the motor.” She says the range hood, in operation, sounded “as if an airplane was coming through the kitchen.” She also says it banged and rattled as if about to explode.
16. The applicant says that a certified engineer inspected the range hood fan motor and concluded that it needed to be replaced. The engineer she refers to is her real estate agent, BR, who offered to take the range hood apart and try to repair the motor. BR did not submit a statement or provide his qualifications. However, he does appear in the applicant’s 2 videos. In the first video, BR is holding the fan, extracted from the range hood but still operational. In the first video, BR says that when the fan is running above low speed, the motor bounces off of the thrust bearing, causing the whole unit to vibrate. In the second video, the fan is switched on. At low speed, there is no rattle. At high speed, there is an audible rattle. The respondents correctly point out that the video does not confirm the noise when the fan is housed in the range hood. The applicant concedes that she forgot to record the noise before removing the fan. However, I find the video confirms that the motor was damaged and caused rattling and noise at high speeds.
17. The applicant submitted a Facebook post or message from the respondent Ms. So in August 2018. Ms. So replied to a post from another building resident complaining of a loud noise from her range hood, suspecting it was coming from the motor and asking for repair recommendations. Ms. So replied that she had been experiencing the same issue, and tried to get it repaired, but the price she was quoted was too high. The applicant says the Facebook post confirms that the respondents knew that the range hood was not in working order on possession day. The respondents say the Facebook post merely confirms that the range hood has been loud for some time, but not loud enough to justify costly repair or replacement.

18. I was unable to identify any relevant caselaw interpreting “working order”. Merriam Webster defines the phrase “working order” as a condition of a machine in which it functions according to its nature and purpose. While I accept that working order does not mean perfect functioning as if new, I find that it is not in the nature of a range hood to rattle and cause excessive noise. I also find the fact that Ms. So obtained a quote to repair the range hood further demonstrates that the range hood was not in working order. I find that the range hood was not in working order when the applicant took possession, and I find that the respondents breached their warranty about the range hood.
19. The respondents argue that the applicant had the opportunity to inspect the range hood before buying it, and could have made their offer subject to repair of the range hood. However, a seller’s warranty in a contract of purchase and sale for a home is effective regardless of whether the purchaser completes an inspection before purchase (*Tong v. Paramis Home Inc.*, 2018 BCCRT 239, a non-binding decision I find useful).
20. The applicant submitted a screenshot from the manufacturer’s website showing that the same make and model range hood was \$4,299. She submitted an installation quote of \$420. However, she was able to obtain a floor model for \$1,185 plus tax (\$1,328.60). She says she paid someone \$200 for the installation, thus the total claim of \$1,528.60. I accept the applicant’s evidence and find the respondent must pay the applicant \$1,528.60.
21. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the \$1,528.60 from March 24, 2019, the date of the purchase invoice, to the date of this decision. This equals \$23.03.
22. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. She did not claim and dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the respondents to pay the applicant a total of \$1,676.63, broken down as follows:
- a. \$1,528.60 for the range hood replacement,
 - b. \$23.03 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 for tribunal fees.
24. The applicant is 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.

Micah Carmody, Tribunal Member