Civil Resolution Tribunal

Date Issued: December 31, 2019

File: SC-2019-003900

Type: Small Claims

Civil Resolution Tribunal

Indexed as*: Harrison v. 0899885 B.C. Ltd.,* 2019 BCCRT 1454

B E T W E E N :

MIKE HARRISON

APPLICANT

A N D :

0899885 B.C.LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about an allegedly poor home inspection report. In 2017, the applicant, Mike Harrison, hired the respondent home inspection company, 0899885 B.C.Ltd., which operates as Canadian Residential Inspection Services. The applicant says the respondent failed to reasonably identify problems with the

deck of a home he was purchasing. The applicant claims $1,850.92, for the labour and material to rebuild his deck.

2. The respondent says it identified the deck's issues and recommended the applicant hire a qualified contractor, as noted in my prior decision in *Harrison v. Scheelar*, 2019 BCCRT 97, in which the applicant unsuccessfully claimed against the home's seller for undisclosed deck rot.

3. The applicant is self-represented. The respondent is represented by its principal, Mike Mueller.

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 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. 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 of this dispute, I find that I am properly able to assess and weigh the 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.

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 whether the respondent unreasonably failed to identify deck rot in its home inspection report, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. Although I have reviewed all the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

10. It is undisputed that after purchasing the home, the applicant's deck was discovered to have rot. In my earlier decision cited above, I found (my bold emphasis added below):

11. Based on the evidence before me, I find the deck rot was a patent defect. I say this because of the inspection report, **and that had the applicant hired a qualified contractor as recommended**, the deck rot would likely have been identified. My conclusion is supported by the applicant's evidence that the inspector returned and said that he was surprised and disappointed that he had missed the deck rot problems. This indicates that a reasonable inspection, **together with the recommended contractor consultation**, would have disclosed them.

12. The applicant relies on the respondent's stated surprise and disappointment, and, the fact that the respondent offered to pay for the deck but then later reneged on that offer. The respondent was not a party to my earlier decision. So, my

conclusions in my earlier decision are not necessarily binding in this decision. However, for the reasons that follow, those conclusions also apply in this dispute.

13. First, I turn to the parties' contract for the home inspection services. The contract's scope is defined as excluding "dry rot" and any inspection for mould, among other things. Contrary to the applicant's submission, I am unable to discern from the applicant's own description and photos whether the rot was wet rot or dry rot. In other words, I cannot tell if the deck's rot was dry rot excluded under the parties' contract. However, that is not the end of the matter.

14. Next, the respondent's inspection report states, under the heading "Deck", that its condition is "satisfactory to poor". It also says that the deck inspection was hampered by restricted access from below and by clutter/storage. In blue font, the report stated, "Please consult a qualified contractor".

15. The applicant provided a January 5, 2018 email from the respondent. In it, the respondent wrote:

> Looking back at the inspection report photos, it appears that the plywood decking was freshly painted which was hiding the rot. Unfortunately this must be why it was missed.

16. Given Mr. Mueller's January 5, 2018 email quoted above, I find the issue is whether the rot was there to be seen at the time of the respondent's inspection. I find the applicant's photos do not establish that the rot was readily visible to the naked eye. Mr. Mueller's email indicates the fresh paint hid the rot and I find I have no evidence before me to conclude otherwise. I also find that there is no evidence that the respondent was responsible to do more than a visual inspection of the deck.

17. In any event, as noted, the respondent's report clearly identified the deck's condition as being "satisfactory to poor", and he recommended the applicant seek a licensed contractor. The applicant admittedly did not follow that recommendation and argues that given the real estate market the respondent should have known the applicant

would not have had time to have that done. In other words, the applicant argues the respondent inspector was responsible to identify all deficiencies, rather than him having to hire a licensed contractor. I disagree with the applicant. There is nothing in the parties' contract that puts this higher onus on the respondent. There is no expert opinion before me from another home inspector to say that the respondent should have identified deck rot or done more than what the respondent already set out in his report. The fact that the applicant felt time pressure to complete the purchase does not expand the respondent's obligations in the parties' home inspection contract.

18. On balance, I find the applicant has not proved the respondent breached the parties' contract or was negligent in failing to specifically identify deck rot. Even if the respondent had been negligent in failing to specifically identify deck rot, I find the applicant has not proved the respondent caused his claimed loss. I say this because the respondent clearly did identify the deck's condition was "satisfactory to poor" and suggested a qualified contractor examine the deck. The applicant chose to proceed with the home's purchase anyway, without a qualified contractor's examination, because of the intense real estate market. On the evidence before me, I find the applicant has not shown he would have made any different decision had the respondent specifically identified deck rot.

19. I turn then to the respondent's earlier agreement to pay for at least some of the deck's repairs (in April 2019 the respondent offered $1,000), which he says was only a gesture of goodwill. The issue is whether any of the respondent's earlier offers to pay are binding on the respondent, despite my conclusion the applicant has failed to prove the respondent was negligent or in breach of contract.

20. On May 6, 2018, Mr. Mueller wrote the applicant that he was willing to pay for the plywood sheathing, posts and labour to remove and reinstall. He added, "Please let me know what that will amount to and I will forward payment". Mr. Mueller sent the applicant essentially the same email on August 27, 2018.

21. It is undisputed that ultimately the applicant decided to handle the deck repairs himself. He calculated $1,850.92: $1,200 for 60 hours of his own labour plus $650.92 in materials. I note the applicant did not provide any time records showing the dates and times he worked on the deck and did not submit the receipts for the materials. I also note the respondent's objection to the applicant's labour and to $190.04 in costs that he says he never agreed on at all. The parties' emails show the deck's repair was more than the applicant originally anticipated, and ultimately included concrete and forms and related materials and labour.

22. The applicant did not provide his $1,850.92 figure to the respondent until March 19, 2019. On April 15, 2019, the respondent rejected that figure and offered $1,000, which the applicant rejected. On April 30, 2019, the respondent advised that after discussion with his insurer and having recently reviewed my January 23, 2019 decision in *Harrison v. Scheelar*, he was not responsible for the deck repair costs.

23. On balance, I find the respondent's offers to pay something for the deck repairs, either the "plywood sheathing, posts and labour" or the $1,000 figure offered on April 15, 2019, are not enforceable against him. The amount of money for the plywood, posts, and labour was not communicated to the respondent until March 2019 at which point the applicant had rejected the respondent's offer to only pay for those items. Then, in April 2019 the respondent provided a replacement offer, the $1,000 figure, which the applicant clearly also rejected. The parties never had an agreement about what the respondent would pay. Given the litigation proceeded, I find the respondent's pre-dispute offers to settle are not binding on him. In other words, I find those offers were not accepted and so there was no binding agreement.

24. As I find the applicant has not proved his claims against the respondent, I find I do not need to analyze in detail the applicant's damages claim.

25. Under the CRTA and the tribunal's rules, as the applicant was unsuccessful, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

26. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair