



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nuttall v. Sidhu*, 2020 BCCRT 420

B E T W E E N :

GREGORY NUTTALL and VIVIANE NUTTALL

APPLICANTS

A N D :

CHARANPREET SINGH SIDHU and RANGINA SIDHU

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about deficiencies in a home sold by the respondents, Charanpreet Singh Sidhu and Rangina Sidhu, to the applicants, Gregory Nuttall and Viviane Nuttall. The applicants claim the kitchen stovetop was cracked and a Heat Recovery Ventilator (HRV) was not functional when they took possession of the home, in

breach of the contract of purchase and sale. The applicants claim \$2,576.38 for the replacement cost of a new stove and \$1307.91 to replace the HRV.

2. The respondents deny owing the applicants anything. The respondents say they did not crack the stovetop and it was undamaged before the possession date. They also say they paid a company to repair the HRV prior to the possession date, as agreed with the applicants.
3. The applicants are self-represented in this dispute. Rangina Sidhu represents both herself and the other respondent, Charanpreet Singh Sidhu.

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. This dispute involves a "they said, they said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the tribunal's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Whether the kitchen stove was in substantially the same condition as when the applicants viewed the home on August 13, 2019, and in good working order, when the applicants took possession of the home, and if not, what is the appropriate remedy?
 - b. Whether the HRV was in good working order when the applicants took possession of the home, and if not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all of the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
10. The applicants originally claimed \$2,576.38 for the replacement cost of a new stove. In their initial submissions, the applicants only requested half the replacement cost of a new stove, or \$1,288.19, because the cracked stove was in a used condition before the crack occurred. However, in their reply submissions the applicants reverted to their original claim of \$2,576.38 for a new stove's replacement cost.

11. Similarly, the applicants originally claimed \$1,500 for a new HRV, but in their submissions claim only the \$1,307.91 they paid to replace the HRV.

Are the respondents liable for the cracked stovetop?

12. The respondents advertised their home for sale. The applicants viewed the home on August 13, 2019. The undisputed evidence is that at the time of viewing, the slide-out kitchen stove had a small chip on the left side of the stovetop glass.

13. On August 14, 2019, the parties signed a Contract of Purchase and Sale (CPS) for the home, which I find included the kitchen stove and HRV. Paragraph 8 of the CPS said that the property and all included items would be in substantially the same condition on the possession date as when viewed by the applicants on August 13, 2019. The possession date was October 17, 2019 at 12:00 p.m.

14. CPS paragraph 16 said that all items included in the purchase would be at the respondents' risk until October 16, 2019 (completion date) at 12:01 a.m., after which they would be at the applicants' risk. While this "risk" might be relevant to an insurance claim, I find it does not determine the parties' liability for damage to the home or any included items.

15. The CPS includes Addendum I, dated August 13, 2019. Paragraph 2 of Addendum I said that the included appliances were sold "as is" and that the seller did not warrant the condition of the appliances.

16. However, the CPS includes another Addendum, also dated August 13, 2019, that states:

"Notwithstanding any other terms of this contract of purchase and sale the seller warrants that all appliances and mechanical, heating and electrical fixtures and included chattels will be in good working order on the completion date." [My emphasis.]

17. I find both this sentence (chattels and fixtures clause) and paragraph 2 of Addendum I are specific terms, but that they might conflict with each other. There is no evidence that either term was included in the CPS by mistake. However, the chattels and fixtures clause applies “notwithstanding any other terms of this contract of purchase and sale”. Therefore, I find the chattels and fixtures clause supersedes paragraph 2 of Addendum I. So, I find the respondents warranted that the home’s appliances, including the kitchen stove, would be in good working order on the October 16, 2019 completion date.
18. The respondents say there was no further damage to the stove from the time of the August 13, 2019 viewing until they moved out on October 16, 2019. However, they did not indicate when they last used the stove, or last evaluated its condition carefully enough to notice any new damage. The respondents submitted a written witness statement from a person who helped them pack, saying that the person did not notice any further damage to the stove in October 2019. However, the person did not indicate when the last date was they viewed the stove in sufficient detail to notice any damage, if ever.
19. The applicants provided a written statement from their realtor confirming that he met the applicants at the home on October 17, 2019 at 12:00 p.m. and provided them with access. The realtor said he left at 12:15 p.m. and then received a text message from the applicants at 12:23 p.m. with a photograph of a badly cracked kitchen stovetop in the home. The applicants provided a computer screen shot showing the photograph was taken at 12:22 p.m. on October 17, 2019, as well as a smartphone screen shot showing the photograph was sent to the realtor at 12:23 p.m. on that date. I find the photograph shows a very large crack in a glass stovetop that appears to extend into a circular heating element area. There are shards of glass matching the stovetop on the countertop adjacent to the crack.
20. The respondents say they were not informed of the stovetop crack for several days after moving out of the home, and suggest that tradespeople hired by the applicants cracked the stove sometime after the applicants took possession of the home.

However, I find this speculation is unsupported by evidence. Given the applicants' evidence of the time the photograph of the cracked stovetop was taken, as confirmed by their realtor, I find the stovetop was cracked as of 12:22 p.m. on October 17, 2019.

21. The question is, did the respondents breach the CPS warranty that the kitchen stove would be in good working order on October 16, 2019?
22. As noted above, the respondents say the stove's condition was unchanged when they moved out on October 16, 2019, but there is no evidence showing when they last specifically looked at or inspected the stove. There is also no evidence that anyone other than the respondents or their agents were in the home before the applicants first viewed the significantly cracked stove shortly after noon on October 17, 2019. Further, the evidence does not suggest that the applicants themselves cracked the stove between gaining access to the home at 12:00 p.m. and taking the photograph at 12:22 p.m.
23. On balance, I find it likely that the respondents or one of their agents cracked the stovetop before they moved out on October 16, 2019. I find the crack is very significant and extends into a heating element area, which I presume would make safe operation of that element impossible, particularly in the presence of potential food spills. Therefore, I find the applicants breached the CPS warranty that the kitchen stove would be in good working order on October 16, 2019. I also find the applicants breached the CPS paragraph 8 warranty that all included items would be in substantially the same condition on the possession date as when viewed by the applicants on August 13, 2019.
24. I must now assess the applicants' damages. The applicants are entitled to be put in the position they would have been in if the CPS had been fulfilled and the warranties not broken. Normally, an appropriate remedy would be the cost of repairing the stovetop. However, the applicants submitted a website screenshot showing that the stovetop replacement part was no longer available. They say this

means they must replace the entire stove, which the respondents do not specifically refute. I find the stove must be replaced.

25. The applicants have not yet purchased a replacement stove, and the parties disagree about the cost of a replacement. The applicants seek the cost of a new stove with similar features and appearance. The applicants provided a website printout showing 4 new stoves acceptable to them, with prices ranging between \$1,995 and \$3,245. The applicants say they are entitled to a complete replacement cost of \$2,576.38 including taxes and removal costs. However, they did not indicate how they arrived at this figure, or provide a corresponding estimate to support that amount.
26. The respondents say the stove was in a “used” condition before the significant crack occurred, and that purchasing a used stove would be more appropriate. The respondents provided copies of internet advertisements for used stoves in support of this argument. The applicants say only one of those used stoves was a “slide-out” model compatible with their kitchen, and it cost \$1,800, which approached the price of a new stove. They also say they should not have to put in extra work to find the cheapest stove possible, citing *Hansson et al v. Siebenga et al*, 2019 BCCRT 998, which I note is not binding on me.
27. Unlike in the *Hansson* case, the applicants have not yet purchased a replacement stove, or identified a specific model they intend to purchase for a known price. I note the applicants were previously willing to accept 50% of the cost of a new stove because the kitchen stove was in a “used” condition, before reverting to their original claim for full replacement cost. However, the parties provided no evidence of the value of the kitchen stove prior to the significant crack occurring. As a result, I find that the full price of a replacement stove is the appropriate remedy.
28. I agree with the reasoning in *Hansson* that the applicants are not required to scour appliance stores for possible cheaper alternatives once they locate one that is sufficiently similar to their kitchen stove. The applicants’ evidence identified 4 new stoves that would be acceptable to them, and the least expensive of these was

\$1,995. Therefore, I find the applicants are entitled to damages of \$1,995 plus \$239.40 in sales taxes, which equals \$2,234.40. The applicants did not submit any evidence of disposal, delivery, or installation costs, so I order none.

Are the respondents liable for the non-functioning HRV?

29. The applicants say an August 2019 home inspection revealed that the home's HRV system was not working. The applicants say their realtor contacted Foster Air Conditioning Ltd. (Foster), who investigated the issue. An August 20, 2019 Foster invoice said Foster found a faulty blower motor in the HRV, and that they wrote up a quote sheet for its replacement. However, no quote sheet is in evidence.
30. In an August 22, 2019 CPS Amendment, the respondents agreed to have the air circulation system repaired by Foster in accordance with the quote, and to provide the applicants with a receipt once the work was completed. The applicants do not deny that the quoted work was performed and a receipt provided, although they did not ask to test or inspect the HRV after the repair. A September 27, 2019 Foster invoice confirms that the HRV motor was replaced as quoted, and that it was tested and confirmed to be operational.
31. The applicants say that on the October 17, 2019 possession date, the "bathroom buttons" did not illuminate when pressed, and the HRV fan did not turn on as expected. The applicants say they ordered a manual for the HRV system that arrived on November 14, 2019, and this allowed them to determine that the HRV was not operational.
32. The applicants say they then contacted Foster again, who diagnosed the problem as a faulty main control circuit board. In a November 28, 2019 letter, Foster said they had not checked the bathroom button operation as part of the work to diagnose and replace the HRV motor. Given this clarification, I infer that the statement in the September 27, 2019 Foster invoice "tested and confirmed operational" referred to the replaced motor only, and not the entire HRV system.

33. In their letter, Foster said their technician determined the HRV's main circuit board was faulty and required replacement. Foster confirmed that the faulty board was the reason the buttons did not operate or light up. Foster also confirmed that no replacement board was available from the manufacturer due to the HRV's age, and they were seeking alternative sources for the part.
34. The applicants say they were forced to replace the entire HRV system because no replacement main board could be found. However, the applicants say Foster did not charge any labour for the replacement, so they only seek the \$1,307.91 cost of the HRV components set out in a January 30, 2020 Foster invoice and a November 26, 2019 quotation from a parts wholesaler.
35. The respondents say that although they paid for HRV repairs in September 2019, the repairs were arranged by the applicants, and it was up to the applicants to determine whether the repairs were satisfactory. The respondents say a Foster technician failed to notice a non-functioning button despite spending a day repairing the system, but they also say the HRV was functioning when they left the home on October 16, 2019.
36. Given that the applicants noticed the bathroom button issue when they took possession on October 17, 2019, and that Foster confirmed the button was not functioning due to a failed main circuit board, I find that the main circuit board had failed by October 17, 2019. I find it unlikely that the circuit board failed in the hours (at most) between the applicants taking possession of the home and noticing the bathroom button issue. On the evidence before me, I find the main circuit board had failed, and the HRV was non-functional, on or before the October 16, 2019 completion date.
37. The chattels and fixtures clause in the CPS said the respondents warrant that all mechanical, heating, and electrical fixtures would be in good working order on the completion date. I am satisfied that the HRV system is a mechanical, heating, or electrical fixture. I find the HRV was not in good working order on the completion date. Therefore, the respondents breached this warranty.

38. I acknowledge that the respondents appear to have satisfied the August 22, 2019 CPS Amendment requiring that they have the quoted work performed by Foster, which I find was to replace the HRV motor. However, although the parties mistakenly assumed the earlier motor replacement had fixed the HRV system, I find this replacement did not relieve the respondents of their obligations under the chattels and fixtures clause warranty. The chattels and fixtures clause was a separate warranty that applied notwithstanding any other obligation under the CPS, as noted above.
39. Turning to damages, I find this situation is similar to the kitchen stove issue, where a replacement part was not available. Further, the evidence does not suggest that used HRV parts were available to purchase. Therefore, I find the applicants are entitled to the cost of replacing the HRV. I find the applicants paid \$1,307.91 for this replacement, and are entitled to that amount.

Tribunal Fees, Expenses, and Interest

40. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$1,307.91 in damages for the HRV replacement. The \$1,307.91 invoice was due on March 11, 2020, so I find interest is calculated from March 11, 2020 until the date of this decision. This equals \$2.86. The applicants are not entitled to pre-judgment interest on the \$2,234.40 in damages for the stove because they have not yet paid any amount for a replacement stove.
41. 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, so I find the successful applicants are entitled to reimbursement of \$175 for tribunal fees. No dispute-related expenses were claimed.

ORDERS

42. Within 30 days of the date of this order, I order the respondents to pay the applicants a total of \$3,720.17, broken down as follows:
- a. \$2,234.40 in damages for the kitchen stove,
 - b. \$1,307.91 in damages for the faulty heat recovery ventilator,
 - c. \$2.86 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$175 in tribunal fees.
43. The applicants are entitled to post-judgment interest, as applicable.
44. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

45. 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.

Chad McCarthy, Tribunal Member