



# Civil Resolution Tribunal

Date Issued: April 22, 2020

File: SC-2020-000101

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hiebert v. Moore*, 2020 BCCRT 435

BETWEEN:

DIANE HIEBERT

**APPLICANT**

AND:

PETER MOORE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

### INTRODUCTION

1. This claim is about an allegedly damaged fireplace. The applicant, Diane Hiebert, purchased a strata unit from the respondent, Peter Moore, and the applicant claims that the included gas fireplace does not work. The applicant claims \$3,743.25 to replace the fireplace.

2. The respondent denies the claim. The respondent argues that the fireplace was working properly when the property was transferred and he is not responsible for the damage after completion of the sale.
3. Both parties are self-represented.

## **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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly 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.

## **ISSUE**

8. The issue in this dispute is whether the respondent breached the contract of purchase and sale by providing a damaged fireplace, and if so, what are the appropriate damages.

## **EVIDENCE AND ANALYSIS**

9. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but only refer to them as I find necessary to provide context for my decision.
10. It is undisputed that on May 26, 2019 the parties entered a contract of purchase and sale (the contract) of the respondent's strata unit (the property).
11. The contract had the following relevant terms:
  - a. The respondent warranted the gas fireplace will work on the possession date.
  - b. The contract had a completion and possession date of July 12, 2019.
  - c. The contract stated that the included items were at the applicant's risk after the completion date.
  - d. The contract was subject to an inspection by the applicant.
12. It is undisputed that the parties completed the sale of the property and the applicant moved in.

13. The applicant says she had the fireplace inspected by Des The Gas Man Ltd. (DTGM), a fireplace services contractor, on September 14, 2019. The applicant says she did not try to turn on the fireplace before this inspection.
14. DTGM provided a repair quote in September 2019 saying the fireplace has cracks along the top seams of the firebox heat exchanger. The quote also says that the fireplace was unsafe to use because of the risk of carbon monoxide poisoning and the fireplace was “legally unrepairable”.
15. DGTM quoted \$3,743.25 to replace the fireplace, the amount claimed in this dispute. The applicant provided a second quote of \$3,753.75 to replace the fireplace.
16. So, did the respondent breach the contract by providing a damaged fireplace?
17. The respondent argues that the contract stated that the included items were at the applicant’s risk after the contract’s July 12, 2019 completion date. The respondent argues that the fireplace was no longer his responsibility when the applicant complained on October 27, 2019. I agree with the respondent.
18. I find that, under the contract’s terms, the respondent’s responsibility for the fireplace’s condition ended on July 12, 2019. To establish her claim that the respondent breached the contract, the applicant has the burden of proving that the fireplace was damaged, and this damage existed before the completion date of the contract. I am not satisfied that the applicant has proved this.
19. Based on DGTM’s quote, I am satisfied that the fireplace was damaged when it was inspected on September 14, 2019. However, the applicant did not provide any evidence explaining when the cracks occurred. Specifically, the applicant has not provided sufficient evidence to prove that the cracks on the firebox heat exchanger existed when the property was transferred in July 2019, instead of occurring in the two months after the sale date.

20. I accept the respondent's undisputed submission that the applicant did not get a home inspection when she bought the property. Without an inspection, the condition of the fireplace when the property was sold is unknown.
21. The applicant's real estate agent, C.W., says that DTGM's technician told her that a building inspector would not have noticed the damage because the deficiency was inside the fireplace. However, the applicant did not provide a statement from DTGM's technician, and therefore C.W.'s evidence is hearsay. While the tribunal may accept hearsay evidence, I place little weight on C.W.'s statement in the circumstances, as the applicant has not explained why she could not provide a statement directly from DTGM's technician.
22. The applicant argues that the fireplace warranty clause was specifically placed in the contract because the fireplace pilot light was turned off when she viewed the property. I accept the applicant's undisputed submission that the fireplace pilot light was not on when she viewed the property. However, I am not satisfied that this proves that the fireplace was damaged at that time.
23. There could be multiple reasons why a fireplace would not be turned on even if it was working properly. I find the respondent statement that he turned the pilot light off when the fireplace was not in use to be plausible.
24. In addition, the respondent provided evidence that the fireplace was not damaged before the property was transferred. The respondent provided undisputed submissions that the fireplace was in excellent working condition and that he regularly used the fireplace when the property was sold. The respondent's statement is supported by a photograph from his real estate agent showing the fireplace operating in a property marketing listing.
25. The respondent also provided undisputed testimony that new fire and carbon monoxide detectors were installed in 2018 and these alarms were never triggered.

26. On balance, even though the pilot light was not on during the applicant's viewing of the property, I am not satisfied that the applicant has proved that the fireplace was damaged at that time or before the possession date.
27. In the absence of evidence that the fireplace was damaged when the property was transferred, I find that the applicant has not proved that the respondent has breached the contract. Accordingly, I dismiss her claim.
28. In accordance with the CRTA and the tribunal's rules, I find the applicant is not entitled to reimbursement of her tribunal fees because she was not successful in this dispute.

## **ORDER**

29. I order the applicant's claims, and this dispute, dismissed.

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Richard McAndrew, Tribunal Member