



Civil Resolution Tribunal

Date Issued: April 29, 2020

File: SC-2019-004625

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grewal v. Gulliford*, 2020 BCCRT 463

BETWEEN:

DAMANPREET GREWAL

APPLICANT

AND:

CURTIS GULLIFORD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about the interior paint in a townhouse. The applicant, Damanpreet Grewal, purchased a townhouse from the respondent, Curtis Gulliford. The applicant says the respondent re-touched the paint in the house with mismatched colours and removed a light fixture. The applicant seeks \$4,200 for the cost of repainting the interior of the townhouse.

2. The respondent denies that he attempted to re-touch the paint after he sold the property to the applicant.
3. The applicant is self-represented. The respondent is represented by Kristy Gulliford.

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. 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.
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.

Light fixture

8. The applicant stated in the Dispute Notice that a light fixture from the first floor of the townhouse had been removed. However, he did not state that he was seeking

damages for the light fixture. Since the applicant did not claim damages for the light fixture, I decline to address this issue.

ISSUE

9. The issue in this dispute is whether the respondent altered the townhouse's interior wall paint.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant has the burden of proof on a balance of probabilities. This means that I must find it is more likely than not that the applicant's position is correct. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

Did the respondent re-touch the paint?

11. The parties agree that the applicant purchased the townhouse from the respondent and took possession on June 6, 2019. Neither party provided a copy of the purchase and sale agreement. The applicant inspected the townhouse prior to purchasing it and says the interior paint was in good condition.
12. The applicant says after he moved in, he discovered the paint had been re-touched in several areas of the house including where pictures and a TV mount had hung. The applicant says the respondent re-touched the paint throughout the house using a different shade and the entire house now has to be repainted. The respondent says he did not touch up the paint in the townhouse and it was in the exact same condition as when the applicant viewed it.
13. The applicant provided a copy of a text message dated May 28, 2019. He did not identify who the sender and recipient were. I infer from its content that it was between the respondent and applicant's realtors. The message stated "Can you find out if the buyers of 80th are going to paint the upstairs bedrooms? If so, my client

will just putty the walls and prep it for them to paint. Otherwise he'll do touch ups. Thank you!". I infer the applicant submitted this text message as proof that the respondent re-touched the paint.

14. I find the text message is hearsay. While the tribunal is permitted to accept hearsay evidence, in this case I place no weight on the text message hearsay evidence about whether the respondent re-touched the paint, given neither the sender or recipient were identified and there is no explanation before me about why the applicant did not obtain a statement from either person.
15. Even if it was admissible, I find the text message does not assist with this dispute because it raises more questions than it answers. For instance, why was the text message sent? What was the response? How did the applicant obtain a copy of it? Did the respondent agree to touch up the paint throughout the entire house as part of the purchase and sale agreement? Why does the text message only refer to the upstairs bedrooms?
16. The applicant also provided unlabelled photos of the townhouse's walls both before and after he obtained possession. The respondent says the photos should not be considered because the before and after photos are of different areas of the house.
17. I have closely examined the photos. The applicant says the "before" photos were from the real estate listing. The first 5 photos appeared to be professionally taken and I infer these were the "before" photos. They showed a furnished living room, kitchen, and bedroom. Although the wall paint appeared to be consistent, that could be because they were taken from across the room. Also, there was no light reflected on the walls.
18. By comparison, there were 12 "after" photos. These photos primarily showed just the walls and not the rest of the room. They did not appear to be the same rooms as the "before" photos and included a photo of the hallway. The "after" photos showed patches where the paint colour was either a shade darker, or glossier than the rest of the wall.

19. I find the photos do not establish the walls' appearance before the applicant took possession. I find the lighting, distance from the walls, and angles of the "before" photos were clearly different than that of the "after" photos. I find as a result the "before" and "after" photos are not comparable and I place little weight on them, aside from showing that the paint on the townhouse walls were re-touched as some point.
20. The respondent says the walls appeared re-touched when he purchased the house in 2012. The respondent provided a written statement from LM dated February 20, 2020. LM stated that she knew the respondent for 10 years and had frequented the townhouse many times. She further stated there had always been paint touch-ups on the walls and it was done by the previous owners. LM also stated that the respondent did not paint the townhouse, aside from some bedrooms and the bottom level of the townhouse which were professionally painted. I find LM's statement contradicts the respondent's statement that he chose not to repaint the house when he purchased it in 2012. For this reason, I give it little weight.
21. However, just because the respondent may have painted the townhouse in 2012 does not mean he re-touched the paint after the applicant bought it. As stated above, the burden of proving his claim is on the applicant. Based on the evidence before me, I find the applicant has not met this burden. I note there were at least 3 different paint colours that the respondent would have had to match and purchase to re-touch the walls. I find it would not be reasonable to expect the respondent to re-touch the walls unless he was required to do so. The applicant did not provide any explanation for why the respondent would go through the expense and labour of re-touching the paint on the walls unless he was required to do so.
22. I dismiss the applicant's claim for the cost of repainting the interior of the townhouse. Since I dismissed the applicant's claim, I do not need to address the estimates for the cost of repainting the townhouse that both parties provided.
23. 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. Here the applicant was unsuccessful so I find he is not entitled to reimbursement of his tribunal fees. There was no request for expenses.

ORDER

24. I dismiss the applicant's claim and this dispute.

Rama Sood, Tribunal Member