



Civil Resolution Tribunal

Date Issued: May 5, 2020

File: SC-2019-008786

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tian v. Wan*, 2020 BCCRT 493

BETWEEN:

ZHUANG ZHUANG TIAN and YUTING ZHANG

APPLICANTS

AND:

LONGJU WAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a breach of contract for the sale of a strata lot. The applicants, Zhuang Zhuang Tian and Yuting Zhang, purchased the strata lot from the respondent, Longju Wan. The applicants say the respondent breached the contract by failing to clean the strata lot and removing certain fixtures. The applicants seek \$1,438.50 for cleaning costs and \$330.12 for the purchase of new curtain rods and

curtains. In arguments they say they have withdrawn claims of \$300 for the cost of labour to install the rods and \$200 for the cost of repairing a cracked door.

2. The respondent disagrees. She says she had the strata lot professionally cleaned and denies removing any fixtures.
3. The applicants are self-represented. A family member represents the respondent.

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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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 as follows:
 - a. Did the respondent breach the parties' contract by failing to clean the strata lot?
 - b. Did the respondent breach the parties' contract by removing curtains and curtain rods from the strata lot?
 - c. If the respondent breached any terms of the contract, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. The applicants purchased a strata lot from the respondent. The parties signed both an August 19, 2019 contract of purchase and sale and an August 26, 2019 addendum. For the reasons that follow, I find the respondent liable for breaching the terms of the parties' contract and addendum.

Issue #1. Did the respondent breach the parties' contract by failing to clean the strata lot?

11. Under clause 3 of the contract, the respondent agreed to leave the strata lot in clean and tidy condition, free from refuse, garbage and debris. The respondent also agreed to professionally clean the strata lot, flooring, and carpets (using shampoo), all by the September 18, 2019 possession date, with supporting receipts available on request.
12. In the addendum, the parties also agreed that the respondent would complete a list of tasks before the completion date of September 18, 2019. Among other things, the respondent agreed she would
 - a. "power wash" the carpet (I infer this means using a wet/dry vacuum cleaner with carpet shampoo),
 - b. professionally clean the heating system ducts,
 - c. professionally clean the smoke odour left in the garage, and
 - d. provide receipts for the above to the applicants before the completion date.
13. The applicants explain these terms were added because they had to move in by September 19, 2019 to accommodate the sale of their previous home.
14. I find the applicants' evidence shows the respondent breached clause 3 of the contract and the above-noted terms of the addendum. The applicants provided a September 18, 2019 email from their realtor, JZ. JZ wrote that upon her and the applicants entering the strata lot that day, they found the strata lot had not been cleaned. They saw "[tons] of debris like dust, stains hairs...everywhere". She attached photos of the strata lot, including its baseboards, blinds, windows, kitchen cabinets and drawers and fridge. I find the photos show visible dust and dirt severe enough to breach the parties' agreement that the strata lot would be left in a clean and tidy condition.

15. JZ also wrote the carpets had not been “power washed”. In particular, the basement carpet was “very dirty”. She sent a video and photo of the carpet that showed dark debris on a lightly coloured carpet. The respondent relies on a cleaning receipt to the carpets were cleaned as required, but based on the depicted debris and JZ’s comments, I find that the respondent failed to power wash or shampoo the carpet. I will discuss the cleaning receipt in greater detail below.
16. JZ wrote that the heating ducts had not been cleaned. She attached a photo of one of the ducts showing visible dirt and debris. I find the depicted duct appears uncleaned and conclude the respondent failed to professionally clean the heating system ducts.
17. As for the smoke odor in the garage, JZ wrote she and the applicants still smelled smoke. After JZ wrote her email, the applicants hired an environmental engineer to remove the odour. In its September 25, 2019 report, the engineer noted that he could smell cigarette smoke and after his work the odour was not detectable. Based on JZ’s email and the environmental engineer’s report, I find the respondent failed to professionally clean the smoke odor left in the garage.
18. JZ included the respondent’s realtor and notary in her email. She advised that the applicants were hiring professionals to clean the strata lot, the carpet, the heating ducts, and the smoke odor. The notary replied by enclosing a September 16, 2019 invoice for \$750 from a numbered company doing business as “JS Management Services”. The invoice, marked paid, was for cleaning services, carpet cleaning, car garage odour removal, and air-conditioning cleaning. The respondent provided a September 18, 2019 receipt showing payment of the \$750 to the numbered company.
19. While I acknowledge the invoice and receipt, they do not show whether the numbered company did an adequate or complete job. The respondent provided no other evidence, from the numbered company or otherwise. The best evidence on the cleanliness of the strata lot comes from JZ’s email (including her photos and video) and the environmental engineer’s report. I find their evidence shows that the

strata lot was left unclean and the specific items in the contract and addendum (power washing the carpet, duct cleaning and smoke odour removal) were incomplete.

20. In their submissions, the applicants questioned the legitimacy of the numbered company. They say it was incorporated recently and has no business license or GST number. They also say they found no way to locate it to hire it for cleaning services. For the purposes of this dispute, given my conclusion above I find it unnecessary to resolve that issue.
21. In summary, I find the respondent breached clause 3 and the contract addendum by failing to do the following: leave the strata lot in a clean and tidy condition, power wash the carpet, and professionally clean the heating system ducts and smoke odour in the garage. I will discuss the appropriate remedy below after considering whether respondent breached any other contract terms.

Issue #2. Did the respondent breach the parties' contract by removing curtains and curtain rods from the strata lot?

22. Clause 7 of the parties' contract lists the included items in the sale of the strata lot. Curtain rods, drapes and window coverings are listed there.
23. For the reasons that follow, I find the respondent removed curtains (which I find fits under the category of drapes) and curtain rods in breach of clause 7.
24. In her September 18, 2019 email, JZ noted the respondent had removed all the curtains and curtain rods. She photographed some of the screw holes where the curtain rods were previously attached. In this dispute, the applicants provided more photos of screw holes as evidence of other missing curtain rods and curtains. The applicants also provided photos from their home inspector. These photos show the curtain rods and curtains at the strata lot, previously mounted above 3 different bedroom windows. The photos were included in the inspector's August 20, 2019 email to the applicants.

25. The respondent says that the curtains and rods were never removed. I disagree and find the photos in evidence show that curtains and curtain rods were included items in the sale of the strata lot. Those items were missing by September 18, 2019. By failing to provide these included items, I find the respondent breached clause 7. I will now consider the appropriate remedies.

Issue #3. If the respondent breached any terms of the contract, what is the appropriate remedy?

26. I have found above the respondent breached the parties' contract, as claimed. The applicants claim the following amounts for cleaning:

- a. \$220.50 for carpet cleaning, as documented in a September 18, 2019 invoice,
- b. \$168 for duct cleaning, as documented in the same September 18, 2019 invoice,
- c. \$756 for smoke odour removal by the environmental engineer, the cost of which is mentioned in the engineer's September 25, 2019 report, and
- d. \$294 for general cleaning services, as documented in a September 19, 2019 invoice.

27. I find the applicants are entitled to reimbursement for all of these amounts, which total the claimed \$1,438.50 amount for cleaning.

28. As for the curtain rods and curtains, the applicants claim the following amounts:

- a. \$106.23 for curtain rods as documented in 2 receipts dated September 21, 2019, and
- b. \$223.89 for curtains as shown in a separate September 21, 2019 receipt.

29. I find the applicants are entitled to reimbursement for the claimed amounts, which total \$330.12. As noted above, the applicants previously claimed an additional \$300

for labour costs to install the rods and \$200 for fixing a cracked door. However, they withdrew those claims in arguments, so I do not order them.

30. In total, I find the applicants are entitled to damages for breach of contract for the sum of $(\$1,438.50 + \$330.12 =)$ \$1,768.62. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled pre-judgement interest on this amount from September 18, 2019, being the date of the breach of contract, to the date of this decision. This equals \$21.83.
31. 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.
32. I find the applicants are entitled to reimbursement of \$125 in tribunal fees and \$140 in translation costs as dispute-related expenses. The applicants provided a February 20, 2020 invoice marked paid for this amount. I found the translation costs were reasonable as they translated text messages from the applicants to the respondent's realtor in the days leading up to the completion and possession date. The text messages were relevant as they showed the applicants pressed the respondent to complete cleaning the strata lot. The translator also translated part of the September 18, 2019 invoice in order to show it was for duct cleaning, which I find was necessary to prove this part of the claimed damages. I also found it reasonable for the applicants to hire a third-party translator rather than translate the documents themselves because this reduced any concerns I would have about bias and accuracy.

ORDERS

33. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$2,055.45, broken down as follows:
 - a. \$1,768.62 in damages for breach of contract,

- b. \$21.83 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$265.00, for \$125.00 in tribunal fees and \$140.00 for dispute-related expenses.

34. The applicants are entitled to post-judgment interest, as applicable.
35. 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.
36. 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.

David Jiang, Tribunal Member