



Civil Resolution Tribunal

Date Issued: August 25, 2020

File: SC-2019-008288

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harford v. Fofonoff*, 2020 BCCRT 947

BETWEEN:

FRANK HARFORD and JANICE HARFORD

APPLICANTS

AND:

CHAD FOFONOFF

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicants, Frank Harford and Janice Harford, purchased a home from the respondent, Chad Fofonoff.

2. The Harfords say Mr. Fofonoff failed to disclose an active leak in the home's garage and storage room underneath, which resulted in property damage after the Harfords moved in. The Harfords seek \$3,000 towards repair of the garage concrete slab, and drywall and light fixture in the storage room.
3. Mr. Fofonoff says he was unaware of any water issues with the home during the time he lived there, and further says the Harfords had a home inspection which should have found the issue, if it existed at the time.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT'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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
7. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

Limitation issue

9. In his Dispute Response and submissions, Mr. Fofonoff argues the Harfords' claim is out of time as he did not receive a copy of the Dispute Notice until March 2020, nearly 2.5 years after the sale of the home. The evidence is that the purchase and sale completed on October 12, 2017, and that the Harfords filed their application for dispute resolution on October 11, 2019, within the 2 year limitation period provided by the *Limitation Act*. Under section 13.1 of the CRTA, it is the application to the CRT that stops the running of time, not when Mr. Fofonoff received the Dispute Notice. Therefore, I find the Harfords started their claim within the relevant limitation period, and are in time.

Missing items

10. In the Harfords' submissions, they allege that Mr. Fofonoff removed some items from the home that he was not supposed to, such as shelves, cupboards, and a security system, thermostat and doorbell. The Harfords also allege misrepresentations about insulation in the floor, and the durability of a reverse osmosis water filter under the kitchen sink. Mr. Fofonoff denies he took anything out of the home he was not allowed to, and denies any misrepresentations about the flooring or filter system. In any event, the claim before me in this dispute is solely about disclosure of a water leak and resultant damage. Therefore, I make no

findings about the Harfords' allegations of missing items or other misrepresentations.

ISSUE

11. The issue in this dispute is whether Mr. Fofonoff failed to disclose a leak in the home, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicants bear the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. It is undisputed the Harfords purchased the home from Mr. Fofonoff and his wife, AF, and the sale completed on October 12, 2017. There is a storage room under the garage, which the Harfords say they use as a shop and to store personal belongings, such as old photos of their children. Mr. Harford says just before Christmas 2017, approximately 2 months after moving into the home, he went into the storage room for the first time since moving in and found water had leaked into the room, damaging the Harfords' belongings.
14. Mr. Harford says, at some point after that, he removed the light socket in the storage room ceiling and noticed the socket was completely corroded, and water dripped out. After some investigation, the Harfords noted a large crack in the garage cement slab, immediately above the storage room, which they say is the leak's likely source. The Harfords say that due to the level of corrosion in the light socket, the leak in the storage room had clearly been ongoing for some time, and had not developed over the last two months, since they moved into the home. As a result, they say Mr. Fofonoff must have known about the leak and failed to disclose that information when they purchased the home.

15. Mr. Fofonoff denies ever having issues with a leak in the garage or the storage room. Although the Property Disclosure Statement (PDS) is not in evidence, it is undisputed there was no water damage or leak information disclosed by Mr. Fofonoff or AF in the PDS. Mr. Fofonoff says there was no reason to disclose any water damage or leak, as he was unaware of any in the two years they lived in the home. Mr. Fofonoff also says the Harfords had an inspector review the property, and if there was any leak or water damage, it would have been discoverable on that inspection. The inspection report is not in evidence.
16. The Harfords submitted a brief email quote from Crackmaster Concrete, for \$4,100 plus GST, to repair approximately 38 feet of cracked concrete floor in the garage that was “leaking below”. The Harfords say the storage room drywall and light fixture also need to be repaired, bringing their total claim above \$5,000, the CRT’s small claims monetary limit.
17. Initially, the Harfords claimed \$5,000 in damages, and had also named the inspector, Ken Davis, as a respondent. The Harfords say Mr. Davis noted the cracked garage slab, but failed to further investigate the crack. Mr. Davis settled with the Harfords for \$2,000, so the Harfords reduced their claim to the remaining \$3,000 claimed in this dispute against Mr. Fofonoff. As Mr. Davis is no longer a respondent in this dispute, I make no findings about any liability on his behalf.
18. In any event, I find the Harfords have not proven their claim against Mr. Fofonoff. First, despite their claim that the crack in the garage is the source of the leak in the storage room, the Harfords have not produced any expert evidence in support of that claim. Additionally, although they say the corrosion in the light fixture would have taken more than 2 months to accumulate, they did not provide any evidence from any of the four individuals they allegedly spoke to about the corrosion, including the City Electrical Superintendent, the fire department, a local plumbing and electrical company, and an electrician friend.
19. I find the question of the leak’s source, and how long the leak had been ongoing, is outside ordinary knowledge and requires expert evidence to determine (see: *Bergen*

v. Guliker, 2015 BCCA 283). As noted above, the Harfords did not submit any expert evidence. I find the quote from Crackmaster Concrete is not expert evidence under the CRT's rules because the writer's qualifications are not given, but also the quote does not sufficiently explain the source of the leak, nor does it explain the duration of the leak at all. Without expert opinion, I find the Harfords have not proven the source of the leak into the storage room, or that the leak existed before they purchased the home.

20. I also find the Harfords have not proven Mr. Fofonoff knew of any alleged leak or water damage prior to selling the home. A PDS asks whether a seller is aware of a defect, and this awareness is inherently subjective (see: *Hamilton v. Calloway*, 2016 BCCA 189). In a PDS, a seller must disclose honestly their actual knowledge of the property, but that knowledge does not have to be correct (see: *Nixon v. MacIver*, 2016 BCCA 8). As noted above, it is undisputed that Mr. Fofonoff and AF indicated they were unaware of any leak or water damage on the property. Mr. Fofonoff and AF say they never experienced any leaks or water damage during their time at the property, and provided a statement from the home's previous owner also stating they had not experienced any issues with leaking into the storage room.
21. I find the evidence does not establish Mr. Fofonoff knew of any leak and therefore I find he did not fail to disclose that knowledge. For all the above reasons, I find the Harfords' claims against Mr. Fofonoff must fail.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the Harfords were not successful, I find that they are not entitled to reimbursement of their paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

23. I order the Harfords' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair