



# Civil Resolution Tribunal

Date Issued: April 1, 2021

File: SC-2020-006389

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chahal v. Poonian*, 2021 BCCRT 358

**BETWEEN:**

RAJVIR SINGH CHAHAL and MANDEEP KAUR

**APPLICANTS**

**AND:**

GURDAWAL SINGH POONIAN and NAVNIT KAUR POONIAN

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Leah Volkers

## **INTRODUCTION**

1. This dispute is about alleged damage in a home sold by the respondents, Gurdawal Singh Poonian and Navnit Kaur Poonian, to the applicants, Rajvir Singh Chahal and Mandeep Kaur. The respondents rented back the home from the applicants after the sale was finalized.

2. The applicants say when they took possession of the home it was not in the same condition as when they viewed it, in breach of the contract of purchase and sale. The applicants say they identified significant damage in the home, including broken doors, leaking plumbing, and missing drywall. The applicants also say the respondents changed out the dishwasher and various lighting, left garbage in the home, and uprooted plants in the yard. The applicants say Mr. Poonian agreed to repair the issues they identified with the home but failed to do so. The applicants claim \$5,000 for replacement and repair costs.
3. The respondents say they complied with the contract of purchase and sale and the home was in the same condition on the completion and possession date as it was when the applicants viewed the home. The respondents say Mr. Poonian never agreed to repair any of the alleged issues with the home and they do not owe the applicants anything.
4. The applicants are spouses and are self-represented in this dispute. Gurdawal Singh Poonian represents both himself and the other respondent, Navnit Kaur Poonian.

## **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). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT 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.

7. Section 42 of the CRTA says 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. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. The parties' submissions and evidence indicate that this dispute may involve a residential tenancy. The CRT generally does not have jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). The RTB has exclusive jurisdiction over matters falling within the *Residential Tenancy Act* (RTA). I will address this issue below.
10. The applicants submitted a video in evidence that I was unable to view. At my request through CRT staff, the applicants re-submitted the video in a different format. The applicants re-submitted a video which I was able to view. The respondents were provided with the new video and provided submissions on it. So, I find there is no breach of procedural fairness in considering the video.

## **ISSUES**

11. The issue in this dispute is whether the home was in substantially the same condition on the possession date as it was when the applicants viewed it on February 17, 2020, and if not, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***The Purchase and Sale of the Home***

13. It is undisputed that the applicants viewed the home on February 17, 2020 and the parties signed a Contract of Purchase and Sale (CPS) on February 18, 2020.

14. Paragraph 4 of the CPS said that the sale would be completed on March 27, 2020 (completion date). Paragraph 5 of the CPS said that the applicants would have vacant possession of the home on March 27, 2020 at 6:00 p.m. (possession date).

15. 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 February 17, 2020.

### ***The Rental Agreement***

16. The CPS included an option for the respondents (as the sellers) to rent back the home from the applicants (as the buyers) after the completion date. On the March 27, 2020 completion date, the respondents exercised the option and the parties signed an addendum to the CPS confirming the respondents' home rental from March 27, 2020 until June 28, 2020.

17. I find that the parties' rental agreement, evidenced by the signed addendum, is a tenancy agreement under the RTA. Therefore, I find any alleged property damage that occurred during the respondents' tenancy is outside the CRT's jurisdiction, and I must refuse to resolve it under section 10 of the CRTA.

18. I find that the purchase and sale of the home was finalized on March 27, 2020, in accordance with the CPS's completion date. I also find that the respondents were living in the home on the completion date and continued to live in the home as tenants

after the sale was finalized. The parties have not provided any evidence to suggest otherwise. Given the agreed rent-back, I find the applicants waived the requirement for vacant possession on the possession date.

19. The applicants and the respondents were represented by realtors for the purchase and sale of the home. However, the parties have not submitted any statements from their respective realtors in evidence.

***Was the Home in Substantially the Same Condition on the Possession Date?***

20. The applicants provided an MLS listing and video of the home which they say shows the home's state when they viewed it on February 17, 2020. The respondents do not dispute the condition of the home when viewed on February 17, 2020.
21. The applicants say they observed damage to the home on three occasions after February 17, 2020. All three occasions were after the March 27, 2020 possession date and after the respondents began renting back the home. The applicants provided a number of photos and videos documenting the alleged damage observed on those visits. These photos and videos all appear to have been taken between April and July 2020, after the possession date.
22. The respondents say the alleged damage "after the sale of the property are invalid". They deny causing any damage to the home and say they did not have access to the basement suite after the sale was finalized. They deny leaving garbage and say that it was picked up by a company contracted out by their real estate agent. There is no evidence from their realtor on this issue.
23. The respondents also say that their realtor paid the applicants \$900 without their knowledge, in good faith "to address and settle any concerns that the new buyers had with the property after filing the complaint against us". The applicants do not deny receiving the payment, but say it was a rental payment. I find that nothing in my reasons turns on the nature of this payment, and therefore I will not address it further.

24. As noted above, the applicants say the condition of the home on the possession date was not the same as when they viewed it. However, I find that the applicants' submissions refer to the possession date as the date they moved into the home on June 13, 2020, instead of the March 27, 2020 possession date listed in paragraph 5 of the CPS. The fact that the applicants did not move into the home until June 2020 does not change the possession date in the CPS.
25. So, the question is whether the home was in substantially the same condition on the March 27, 2020 possession date as when the applicants viewed the home on February 17, 2020 (my emphasis).
26. As noted above, I decline to consider the applicants' submissions and documentary evidence related to any alleged damage the applicants say they identified during and after the respondents' tenancy because those issues are within the exclusive jurisdiction of the RTB.
27. The applicants did not provide any evidence that they viewed the home on the possession date or any documentary evidence of the home's condition on the possession date. The parties did not provide any evidence from their realtors about the condition of the home when viewed by the applicants or on the possession date.
28. The evidence provided does not show that any of the alleged damage occurred prior to or on the possession date of March 27, 2020.
29. The applicants bear the burden of proving their claims. Here, I find the applicants have not provided sufficient evidence to prove the home had any damage on the March 27, 2020 possession date. I find the applicants have not proven the home was not in substantially the same condition on March 27, 2020 as it was when they viewed the home on February 17, 2020.
30. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

Here, the respondents are the successful parties. However, the respondents have not paid any CRT fees or claimed any dispute-related expenses and so I award none.

## **ORDERS**

31. I dismiss the applicants' claims and this dispute.
32. To the extent the applicants' claims relate to a residential tenancy under the exclusive jurisdiction of the RTB, I refuse to resolve them under section 10(1) and 11(1)(a) of the CRTA.

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Leah Volkers, Tribunal Member