



Civil Resolution Tribunal

Date Issued: May 14, 2021

File: SC-2021-000570

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Karesa v. Tremblay*, 2021 BCCRT 519

BETWEEN:

CRYSTAL KARESA and KEVIN DRIVER

APPLICANTS

AND:

PAUL TREMBLAY and PAMELA TREMBLAY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a woodstove that was included in the sale of a residence. The applicants, Crystal Karesa and Kevin Driver, bought the home from the respondents, Paul Tremblay and Pamela Tremblay. The applicants say the respondents represented that the woodstove was CSA certified and that there was

a WETT (Wood Energy Technology Transfer) certificate on file. The applicants say this was false, and they were unable to use the woodstove. The applicants claim \$3,534, for installation and certification of a new woodstove.

2. The respondents deny representing the woodstove was certified. The respondents say if the applicants had done a professional home inspection, any issues with the woodstove would have been identified and dealt with at that time.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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 CRT 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. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.
6. Under section 42 of the CRTA, 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondents represented the home's woodstove was certified and had a WETT certificate, and if so, whether the applicants are entitled to the claimed \$3,534 for a new woodstove and associated certification.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicants bear the burden of proving their claims, on a balance of probabilities. While I have reviewed the parties' submitted evidence and arguments, I have only referenced below what I find is necessary to give context to my decision.
10. The parties signed a contract of purchase and sale on September 15, 2019, and a September 5, 2019 property disclosure statement (PDS) completed by the respondents was incorporated into it. The applicants removed all their subjects on October 9, 2019. The completion date for the home's sale was October 25, 2019. A WETT certificate for the woodstove sold with the home never existed. A WETT inspection of wood burning appliances is done by a certified technician. None of this is disputed.
11. The applicants say that if they had been told there was no WETT certificate, they would have made a condition or subject in the purchase agreement about having the woodstove certified before they bought the home.

12. As noted above, the respondents deny representing in the PDS that there was a WETT certificate. They respondents also say the applicants could have had the home professionally inspected before purchase, and failed to do so. I find the applicants' failure to have the home professionally inspected before purchase is not determinative. Rather, what matters is whether before the sale completed the respondents misrepresented that the woodstove was certified, and, whether the applicants reasonably relied on such a misrepresentation.
13. I note the respondents submitted a statement from their realtor JP, who said that one of the sale conditions was that the buyers obtain confirmation from their insurer that the woodstove will not void their fire insurance coverage. It is clear this subject clause was solely for the applicant buyers' benefit, and so I find it is not determinative of the respondents' obligations.
14. I turn then to the relevant evidence.
15. In a Statement of Facts completed by the parties for this proceeding, they agree that in the September 5, 2019 PDS the respondents ticked a box indicating the woodstove had been approved by local authorities, but did not tick the box that said 'received WETT certificate'.
16. In reply submissions, the applicants say the WETT certificate line on the PDS form was "partially marked and questionable". The applicants do not explain why they allegedly relied on the PDS if they also recognized the mark by WETT certificate was not clear.
17. I have reviewed the PDS in evidence. I find it is consistent with the parties' agreement in the Statement of Facts. I also note that the respondents did not initial anywhere on the row for question E (which asks about the WETT certificate), whereas they initialed (yes, no, or does not apply) for every other question on the PDS.
18. So, I find the respondents did not represent in the PDS that the woodstove had a WETT certificate. I further find the respondents did not reasonably believe the

applicants had made such a representation in the PDS, given their own admission there was only a “questionable” ink spot there.

19. I do find the respondents represented the woodstove had been approved by local authorities, because they agree they made the checkmark on the PDS indicating this.
20. The respondents say they had yearly house insurance until they moved out and had no issues with the woodstove. I infer they argue that they understood the woodstove was approved. There is no evidence before me that the woodstove was not “approved by local authorities”, and no evidence of what approval was required or what form such approval would take, given the distinction made on the PDS between local authorities’ approval and a WETT certificate. Further, the applicants’ focus in this dispute is clearly on the WETT certificate, which as noted was not issued at the time the house sale completed. Yet, I have found above the respondents did not represent in the PDS that a WETT certificate had been issued.
21. However, that is not the end of the matter. Did the respondents represent a WETT certificate had been issued between the September 4, 2019 PDS date and the October 25, 2019 completion date? I note the PDS sets out the respondents’ ongoing obligation to advise the applicants of any important changes to the information set out in the PDS. I find this means that any misrepresentation about the woodstove’s certification before the sale closed is relevant and could lead to damages if the applicants prove they reasonably relied on the representation and that it caused their claimed loss.
22. JP’s April 5, 2021 statement in evidence is that a WETT certificate did not exist, and that this was made clear to the applicants’ realtor DM. I disagree, given Mr. Tremblay’s exchange with DM discussed below.
23. The applicants say Mr. Tremblay told DM that there was a WETT certificate for the woodstove, and the applicants say “we took this guarantee in good faith”. In the Statement of Facts document, the respondents disagree Mr. Tremblay told the

realtor this, but the respondents did not address this in their submissions. DM says in their handwritten March 5, 2021 statement in evidence, that Mr. Tremblay repeatedly assured DM that he had a WETT certificate for the woodstove and that DM just needed to contact Mr. Tremblay's insurance provider.

24. The applicants submitted a February 2020 compilation of an undated text message exchange between Mr. Tremblay and, I infer, DM. In it, DM asks Mr. Tremblay to authorize DM's access to the insurance file for the WETT certificate information, and Mr. Tremblay responds "no problem". DM later texted they wanted Mr. Tremblay to call the insurance agent to provide consent for the WETT certificate access, and Mr. Tremblay responded "done". Finally, DM texted, "can you tell me if the woodstove is ULC or CSA approved?", and Mr. Tremblay responded "Csa" (reproduced as written). Mr. Tremblay did not address these text messages in his submissions. I infer that CSA is one group that is authorized to conduct WETT certificate inspections.
25. On balance, I find Mr. Tremblay misrepresented to the applicants, through their realtor agent, that the woodstove was CSA approved and had a WETT certificate. However, the text messages in evidence between DM and Mr. Tremblay are not dated, so I cannot tell if they occurred before or after the October 25, 2019 completion date. In DM's March 5, 2021 typed statement, DM referred to the PDS and that "we found later" that the representation about the woodstove was "false". DM then wrote, "during the following 2 weeks" DM had numerous text messages asking for proof of the WETT certificate, which I infer are the messages I have set out above. Given DM's acknowledgement there was a tight timeline before the sale completed, I am unable to conclude DM's text messages with Mr. Tremblay occurred before the October 25, 2019 completion date. So, I find the applicants did not rely on Mr. Tremblay's assurances to DM when they purchased the home.
26. Even if I am wrong in my conclusion above about the timing of Mr. Tremblay's messages with DM, I find the applicants have not proved their claimed damages resulted from Mr. Tremblay's misrepresentation about the WETT certificate. The

applicants say they could not use the woodstove until it was certified. However, I have no supporting evidence to show the woodstove sold with the home could not be used or could not be certified. The applicants submitted a November 2020 \$3,534 quote for the woodstove's replacement, the amount claimed in this dispute. However, the quote in evidence does not mention the existing woodstove or that it required replacement or could not be certified. For these reasons alone, I find the applicants have not proven their claims.

27. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The successful respondents did not pay CRT fees or claim dispute-related expenses. As they were unsuccessful, I dismiss the applicants' claim for reimbursement of CRT fees.

ORDER

28. I dismiss the applicants' claims and this dispute.

Shelley Lopez, Vice Chair