Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Yoshida v. Regent International Developments Ltd.,* 2021 BCCRT 540

B E T W E E N :

GREGORY YOSHIDA and VINCENT YOSHIDA

APPLICANTS

A N D :

REGENT INTERNATIONAL DEVELOPMENTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicants, Gregory Yoshida and Vincent Yoshida, purchased a residential unit in a building developed by the respondent, Regent International Developments Ltd.

(RID). The Yoshidas say RID failed to repair certain items in their home as required. They claim reimbursement of $514.85 to repair loose floorboards, $189 for general paint touch ups and cabinet repairs, $177.45 for an HVAC assessment, and $685.21 to replace a door, for a total of $1,566.51.

2. RID says that except for paint touch ups and cabinet repairs, it has addressed and repaired all items under warranty in a timely manner. It agrees to pay the Yoshidas $189 for paint touch ups and cabinet repairs, but says it owes nothing more.

3. Both applicants are self-represented and RID is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. 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.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 in the interests of justice.

6. 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.

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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

8. The Yoshidas initially claimed $200 for additional Hydro costs associated with their allegedly faulty HVAC system. They have since abandoned this claim.

ISSUE

9. The issue in this dispute is whether the Yoshidas are entitled to reimbursement of $1,566.51 for various home repairs.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicants, the Yoshidas must prove their claims on a balance of probabilities. I have considered all the parties' evidence and submissions but refer only to what is necessary to explain my decision.

11. The parties agree that RID must reimburse the Yoshidas $189 for paint touch ups and minor cabinet repairs. So, I order RID to reimburse the Yoshidas $189 for this claim. For the following reasons, I dismiss the remainder of the Yoshidas' claims.

12. Based on the parties' submissions I infer that the Yoshidas have a home warranty with a third party who is not named in this dispute. The warranty is not in evidence. I also infer that RID had a contractual relationship with the home warranty provider to carry out warranty repairs in the Yoshidas' home, but the contract is not in evidence. There is no evidence of a direct contractual relationship between the Yoshidas and RID, nor is there evidence that RID was acting as an agent for the warranty provider.

13. In the circumstances, I find that to succeed in their remaining claims the Yoshidas must establish that RID was negligent. To prove negligence the Yoshidas must show that RID owed them a duty of care, RID breached its required standard of

care, and RID's breach caused them to incur damages (see *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27).

Floorboards

14. The Yoshidas claim $514.85 for the cost of repairing 2 loose floorboards in their home. They say they submitted a claim for the floorboards through RID's online portal on August 18, 2019 and again on May 25, 2020 within the 1-year warranty period. Evidently this was not a warranty claim with the Yoshidas' warranty provider, but a claim directly with RID. The Yoshidas did not explain this claim process or RID's obligations under it, nor did they specify the dates of the 1-year warranty period.

15. The parties agree that at some point RID assessed the floorboards in the Yoshidas' home. RID says this was on August 11, 2020, but the Yoshidas deny this. I infer from their submissions that the Yoshidas say RID assessed the floorboards sometime before August 11, 2020, though they do not specify a date. The Yoshidas say that after RID's assessment it promised to send a flooring professional to investigate further but failed to do so. They say they relied on RID's promise to further investigate the issue, and that is why they failed to make a warranty claim for the floorboards until after the 1-year warranty period expired.

16. In contrast, RID says that on August 11, 2020 it determined the floorboards were installed in accordance with the BC Housing Residential Construction Performance Guide, implying it would not send anyone for further investigation. Whether RID assessed the floorboards on August 11, 2020 or some other date, there is no written report or other documentation of its assessment in evidence. On balance, I find the Yoshidas have not established that RID promised to further investigate the floorboards.

17. On August 11, 2020 the Yoshidas paid a flooring company $514.85 to install filler under the 2 loose boards to reduce their movement. The invoice states that the substrate was repaired "due to excessive floor movement as per National Wood

Flooring Association, (NWFA) leveling guidelines." It does not state the cause of the excessive floor movement.

18. As the developer of the Yoshidas' building I find RID owed them a duty of care. However, I find the exact nature of the parties' relationship and RID's obligations under it are unclear, and the Yoshidas provided no evidence about RID's required standard of care. The Yoshidas do not say when they moved into their unit or when they first noticed the loose floorboards, and they provided no evidence of what caused the floorboards to be loose. I find the Yoshidas have not established that RID breached its required standard of care by causing the loose floorboards or failing to repair them. I dismiss this claim.

HVAC Assessment

19. The Yoshidas say the HVAC system in their unit created excessive noise and failed to sufficiently heat the bedrooms. They claim $177.45 for the cost of an HVAC assessment.

20. The Yoshidas say they first notified RID of the HVAC problems through RID's online portal on November 1, 2019. I infer that they first discovered the HVAC problems on or shortly before this date. The Yoshidas say that for over a year RID refused to conduct an assessment and threatened to charge them for such an assessment if it determined the HVAC system was working properly. However, I find this assertion is not supported by the evidence. RID says, and the Yoshidas do not dispute, that on December 5, 2019, it sent a subtrade to install a new mechanical vent in the bathroom to alleviate the HVAC situation. The Yoshidas do not specifically refer to this site visit in their submissions, and there is no documentary evidence about it, but I infer that they were not satisfied with RID's assessment or work on that date. On February 7, 2020 the Yoshidas paid Pioneer Plumbing (Pioneer) $177.45 to conduct an HVAC assessment, and they provided an invoice to support this claim.

21. The Pioneer invoice said there was a "lack of pressure in farthest bedrooms causing lack of airflow in back areas," and that the air noise in the unit was "louder than

expected." The invoice said the thermostat was in the wrong location, and there was a "possible ducting issue." The invoice recommended moving the thermostat to the hallway, and "cutting exploratory holes to determine duct size and if it is undersized or not properly pressurized" (reproduced as written).

22. The Yoshidas say that based on the Pioneer invoice they filed a warranty claim. That claim is not in evidence. They say their warranty provider's representative conducted a site visit and agreed that the HVAC caused excessive noise. The Yoshidas did not specify the date of this visit or provide any evidence about it. Although they do not say so in their submissions, I infer that their warranty claim was denied, which is why they bring this claim against RID.

23. RID says, and the Yoshidas do not dispute, that on March 13, 2020, it conducted a site visit to adjust the louvers in the Yoshidas' living room and second bedroom. The Yoshidas do not specifically refer to this visit in their submissions, and there is no evidence about it.

24. The Yoshidas say that RID sent a consultant to their unit who said the HVAC noise was "totally unacceptable," but there is no documentary evidence to support this assertion. The Yoshidas did not specify the date of this alleged site visit, so it is unclear if they refer to the site visit on December 5, 2019, March 13, 2020, or a different date. RID says the Yoshidas must have misheard the consultant.

25. I have already found that RID owed the Yoshidas a duty of care, but that the nature of the parties' relationship and RID's obligations under it are unclear. RID's December 2019 site visit undisputedly addressed the HVAC problem approximately one month after the Yoshidas first reported it, but the Yoshidas provided no evidence about RID's findings on that date. That the HVAC problem may not have been resolved at that time and required further investigation and repairs does not prove RID caused the HVAC problems or that its December 2019 assessment fell below the required standard of care. The Yoshidas have the burden of proving their claim. I find they have not done so, and I dismiss it.

Door Replacement

26. The Yoshidas claim $685.21 to replace a door to reduce the noise from the HVAC system.

27. It is undisputed that on October 8, 2020 RID sent a technician to install a "sound blanket" for the heat pump in the Yoshidas' unit. The October 15, 2020 invoice states that after the compressor was installed, the decibel reading in the Yoshidas' storage room was 72. The invoice states that the technician discovered a loud air noise and air leakage near the filter section of the heat pump. It says it found that the top and right side of the supply duct flex connector was off the unit. It says the technician screwed the connector back into the unit and sealed around the connector with foil tape. It says that at that point the decibel reading was 64. The Yoshidas say this was still too loud but provided no evidence about acceptable decibel levels for HVAC systems.

28. The October 15, 2020 invoice says that immediately after the site visit, the Yoshidas notified the technician that one of the vents was making a whistling noise. The technician asked the Yoshidas to ensure all the vents were wide open. The Yoshidas reported that after opening all the vents the whistling noise had stopped. The invoice states that the following day the Yoshidas notified the technician that the air noise from vents in living room and kitchen was "a bit loud."

29. Though the Yoshidas do not specifically refer to the October 8, 2020 site visit in their submissions, their description of an unspecified site visit by one of RID's technicians is somewhat consistent with the invoice for the October 8, 2020 visit. The Yoshidas say the sound blanket RID installed did not reduce the HVAC noise, because the noise mostly comes from the ducts. They do not say whether the technician's reconnecting and sealing of the HVAC connector reduced the noise, but I find that it did, based on the invoice.

30. On January 3, 2021 the Yoshidas paid a contractor $685.21 to replace a hollow core door RID had originally installed with a solid door to reduce the noise from the

HVAC system. They provided an invoice to support this expense. They did not specify who advised them to replace the door.

31. I find the fact that the Yoshidas said the HVAC was "a bit loud" after the October 8, 2020 HVAC repairs does not mean the HVAC was not working properly or that RID was required to repair it. Without a professional assessment or some other evidence about the necessity of replacing the door, I find the Yoshidas are not entitled to reimbursement for replacing it. I dismiss this claim.

32. The *Court Order Interest Act* applies to the CRT. The Yoshidas are entitled to pre-judgment interest on the $189 owing calculated from June 8, 2020, which is the date RID undisputedly postponed the relevant repairs indefinitely, to the date of this decision. This equals $0.98.

33. 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. Since the Yoshidas were partially successful, I find they are entitled to reimbursement of half their CRT fees in the amount of $62.50. They did not claim any dispute-related expenses.

ORDERS

34. Within 30 days of the date of this order, I order RID to pay the Yoshidas a total of $252.48, broken down as follows:

    a. $189 as reimbursement for paint touch ups and cabinet repairs,

    b. $0.98 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 in CRT fees.

35. The Yoshidas are entitled to post-judgment interest, as applicable.

36. I dismiss the remainder of the Yoshidas' claims.

37. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

38. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member