



# Civil Resolution Tribunal

Date Issued: July 5, 2021

File: SC-2020-007475

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thind v. Chen*, 2021 BCCRT 730

**BETWEEN:**

HARJINDERPAL THIND and SANDEEP THIND

**APPLICANTS**

**AND:**

CHAO CHEN and QINGXUAN WANG

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. This dispute is about a house purchase.
2. The applicants, Harjinderpal Thind and Sandeep Thind, purchased a house from the respondents, Chao Chen and Qingxuan Wang. The applicants say the respondents

failed to professionally clean the house as required under the purchase agreement and claim \$750.75 for cleaning costs.

3. The applicants also say the respondents left patched marks on the walls and garbage and items in the house. The applicants claim \$1,890 for refinishing and painting the walls, \$350 to remove the applicants' belongings and garbage, and \$250 for stress, gas, and time spent on the issue.
4. The respondents say they had the house cleaned and agreed to clean it again, but the applicants cleaned it themselves. The respondents say some of the wall patches were in the house when the applicants viewed it and that they were not required to fix the patches or repaint the walls under the purchase agreement. The respondents deny they owe the applicants any money.
5. The applicants are represented by Harjinderpal Thind and the respondents are represented by Chao Chen.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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. 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 in the interests of justice.

8. 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.
9. 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.

## **ISSUES**

10. The issues in this dispute are whether the respondents must pay the applicants for cleaning costs, item removal, refinishing and painting walls, or damages for stress or time spent on the dispute.

## **EVIDENCE AND ANALYSIS**

11. In a civil dispute like this one, the applicants must prove each of their claims on a balance of probabilities. I have reviewed the parties' submissions and weighed the evidence provided but only refer to that necessary to explain my decision.
12. The parties entered into a purchase agreement for the house on July 12, 2020. The parties agreed that the house would be in substantially the same condition on the possession date as when the applicants viewed the house on July 12, 2020. In the purchase agreement, the applicants agreed to accept the house in its present state and in an "as is" condition. In a July 23, 2020 addendum, the respondent sellers agreed to "professionally clean" the property before the possession date, at their cost. In an August 6, 2020 addendum, the parties agreed to a possession date of August 18, 2020.

## ***Cleaning Costs***

13. The respondents say they had the house professionally cleaned and provided a handwritten invoice for \$450 in cleaning fees on August 17, 2020. The invoice did not provide any details such as how long the cleaning took or how many people cleaned. While the respondents may have hired other people to clean the house, I find something more was required to meet the terms of the contract. I find the agreement to “professionally clean” means the cleaning must be done to a professional standard, not just done by other people. I find “professionally clean” means free of obvious defects, such as visible dirt. Based on the applicants’ August 18, 2020 photos, I find the cleaning was not done to a professional standard.
14. The applicants’ photos show obviously dusty window blinds, dead bugs or dirt in the corners of rooms and along windowsills and doorsills, thick cobwebs or spider webs on windows and light fixtures, dead spiders on ceilings, and food spills and grease in the fridge and on the stove. I find the house was obviously not cleaned to a professional standard before the August 18, 2020 possession date.
15. The respondents say they understood the applicants would view the house on August 18, 2020 to see if it was cleaned to their satisfaction. Based on the wording of the purchase agreement, I disagree. It is clear that all parties agreed the house would be cleaned to a professional standard before August 18, 2020.
16. I also disagree with the respondents that the applicants agreed to let the respondents arrange for the house to be cleaned on August 20 or 21, 2020. This is because the respondents provided no supporting evidence, such as statements from their realtor or further written changes to the purchase agreement. Further, that is inconsistent with the applicants hiring their own cleaners on August 18, 2020. So, I find the respondents breached the contract by failing to professionally clean the house by the possession date.
17. The applicants provided an August 18, 2020 invoice for \$750.75 for cleaning fees, which I find reasonable and allow that amount.

## **Removal Costs**

18. The purchase agreement says the respondents will give the applicants vacant possession of the property on the August 18, 2020 possession date. The applicants say the respondents left a piano, a mattress, and some old doors at the house after they moved out. I infer they argue that the respondents failed to provide vacant possession as agreed.
19. It is undisputed that the respondents removed the mattress at the applicants' request and so I will not consider that matter any further.
20. The respondents agreed that they left old doors at the house, but say they were there when they moved in so thought they were part of the house. There is no evidence before me about what the doors looked like or whether they were attached to the house, which I find would make them part of the house and part of the "as is" sale. So, I find the applicants have failed to prove their claim about the doors.
21. The respondents say the applicants wanted the piano and provided a text message between their real estate agent (A) and the applicants' agent (S). I find the text does not contain any agreement that the respondents could leave the piano. Rather, S noted that the respondents offered to give the applicants the piano but said they needed more information before deciding. So, I find by leaving the piano the respondents breached the purchase agreement by failing to give the applicants vacant possession of the house.
22. The intention of damages for a breach of contract is to put the applicants in the position they would have been in if the contract had been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39). In this case I find that means ordering the respondents to pay the applicants' cost of moving or disposing of the piano. Although the applicants claim \$350 in removal costs, they provided no explanation how they calculated that value, or any supporting evidence such as moving fees or disposal fees. As I find the

applicants are entitled to removal costs for the piano only, I find \$200 an appropriate remedy, on a judgment basis.

### ***Wall Repair and Painting Costs***

23. It is undisputed, and the applicants' photos show, that several walls have been patched with white compound which does not match the painted surfaces. The respondents say most of those patched areas were there on July 13, 2020 when the applicants viewed the house and the respondents "decorated" them with artwork and mirrors.
24. In a real estate transaction like this one, the buyers are expected to make reasonable inquiries and conduct a reasonable inspection of the property. Unless the sellers breach the contract, commit fraud, misrepresent the property, or fail to disclose a latent defect they knew about, the buyer assumes the risk for any property defects. This is the principle of "buyer beware" (see *Nixon v. MacIver*, 2016 BCCA 8).
25. A latent defect cannot be discovered through a reasonable inspection of the property and includes defects that render the property dangerous or unfit for living. A patent defect can be discovered by conducting a reasonable inspection and making reasonable inquiries about the property. A seller is not required to disclose patent defects to a buyer, but they must not actively conceal them (*Cardwell v. Perthen*, 2007 BCCA 313).
26. I find the pre-existing patched walls are patent defects, as they would have been easily discovered upon inspection of the property. However, I find the respondents actively concealed the patched areas behind artwork and mirrors, which made them not readily visible to the applicants at the July 13, 2020 viewing. While I find buyers could expect to find nail holes on walls where art and mirrors were, I find the respondents would not reasonably expect to find pre-existing large white patches on the walls, which were undisputedly covered by art at the house viewing. So, I find the respondents must reimburse the applicants the cost of remedying these defects, including refinishing those areas of the wall and painting over the patches.

27. It is undisputed that the respondents removed a dog gate at the top of a stairway and patched the screw holes in the stairway walls after the July 13, 2020 viewing. Based on the applicants' photos I find the patches are large, uneven, and not painted to match the coloured walls. As the respondents did not leave the house in the condition it was when viewed by the applicants, I find they must reimburse the applicants the cost of fixing the patchwork and touching up the paint on the walls where the dog gate was affixed.
28. I agree with the respondents that the purchase agreement did not include an agreement to repaint the house. However, given the size and number of both pre-existing and new patches on the various coloured walls, I find it reasonable for the applicants to repaint the entire rooms with patched walls so that the paint colours match. Based on the August 21, 2020 invoice submitted by the applicants, I find they paid \$1,890 to have the walls refilled, finished, and painted. I order the respondents to reimburse the applicants this cost.

### ***Damages for Stress***

29. The applicants claim \$250 for the stress of dealing with this dispute. As discussed in the non-binding but persuasive decision in *Eggberry v. Horn et al*, 2018 BCCRT 224, for a claim for stress or mental distress to be successful there must be medical evidence supporting the stress or mental distress. While I accept that the situation may have been stressful and unpleasant for the applicants, that alone is insufficient to prove damage or loss. As the applicants did not submit any medical evidence, I find they are not entitled to any damages for stress and dismiss that claim.
30. In summary, I find the respondents must pay the applicants \$750.75 in cleaning fees, \$200 in disposal and removal costs, and \$1,890 for refinishing and painting the patched walls. I dismiss the applicants' claim for stress.
31. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the \$2,840.75 total award from August 21, 2020, the date

the last expense was incurred, to the date of this decision. This interest equals \$11.17.

32. 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. I find the applicants are entitled to reimbursement of \$200 in CRT fees.
33. As noted above, the applicants claimed \$250 for stress, gas, and time spent on the dispute. They provided no calculation for gas or any explanation how that was related to this online dispute so I dismiss their claim for reimbursement of gas expenses. CRT rule 9.5(5) says that the CRT will only order compensation for time spent dealing with a dispute in extraordinary circumstances which, I find, do not exist here. Overall, I order no reimbursement of any dispute-related expenses.

## **ORDERS**

34. Within 30 days of the date of this order, I order the respondents to pay the applicants a total of \$3,051.92, broken down as follows:
  - a. \$750.75 for cleaning fees,
  - b. \$200 for disposal fees,
  - c. \$1,890 for refinishing and painting costs,
  - d. \$11.17 in pre-judgment interest under the COIA, and
  - e. \$200 in CRT fees.
35. The applicants are entitled to post-judgment interest under the COIA, as applicable.
36. I dismiss the applicants' claim for stress and dispute-related expenses.
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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

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Sherelle Goodwin, Tribunal Member