



Civil Resolution Tribunal

Date of Original Decision: July 29, 2021

Date of Amended Decision: August 17, 2021

File: SC-2021-001129

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Miller v. MacLean*, 2021 BCCRT 830

BETWEEN:

JAMES MILLER and KAREN MILLER

APPLICANTS

AND:

MATTHEW MACLEAN and OLIVIA MACLEAN

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a house purchase. The applicants, James Miller and Karen Miller, purchased a house from the respondents, Matthew MacLean and Olivia MacLean. The Millers claim the appliances, carpet and windows were not professionally cleaned when they took possession of the home, in breach of the July

13, 2020 contract of purchase and sale (CPS). The Millers also say they discovered stained hardwood flooring that had been concealed under furniture, contrary to the MacLeans' warranty in the CPS. The Millers claim \$1,585.13 for the cost of professional cleaning and temporary accommodation, and \$420 for the hardwood floor repair.

2. The MacLeans say the appliances, carpet, and interior windows were all professionally cleaned, and they gave the Millers the cleaning receipt as required by the CPS. The MacLeans say they did not hide anything from the Millers and were not aware of any hidden stains or damage to the floor until they moved.
3. The parties are all self-represented.

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. 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.
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.

ISSUES

8. The issues in this dispute are:
 - a. Did the MacLeans breach the CPS by failing to professionally clean the carpets and windows?
 - b. Did the MacLeans breach the damage warranty in the CPS?
 - c. If yes to either of the above, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicants the Millers 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.
10. The parties undisputedly entered into the CPS on July 13, 2020. The sale completed on September 29, 2020 and the MacLeans provided vacant possession on October 4, 2020.
11. Section 3 of the CPS required appliances, carpets and windows to be "professionally cleaned" and required the MacLeans to provide the cleaning receipt to the Millers. Section 3 of the CPS also says the McLeans warrant there is no hidden damage, including stains, under furniture or area carpets, that is not "readily visible" or "reasonably expected" by the Millers.

12. The Millers say the MacLeans breached section 3 of the CPS in two ways. First, by failing to have the appliances, carpets, and windows professionally cleaned. Second, by providing a warranty that there was no damage hidden by furniture, when there was, in fact, a hardwood floor stain hidden by furniture. As noted, the MacLeans deny they have breached any of their obligations under the CPS. I will address each of the alleged CPS breaches below.

Were the carpets, windows and appliances professionally cleaned?

13. It is undisputed that the MacLeans paid cleaners to clean the home. The \$525 cleaning receipt in evidence shows 3 cleaners for 5 hours. However, the parties dispute whether the carpets, windows and appliances were “professionally cleaned”, as required by the CPS and noted above. The Millers have only claimed for the carpet and window cleaning costs. So, for the purpose of this dispute, I find I do not need to determine whether the appliances were professionally cleaned.

Carpets

14. The parties disagree over whether having a professional cleaner just vacuum the carpets met the contractual obligations. The MacLeans say yes, the Millers say no.

15. The realtors for the parties each submitted statements in support of their respective clients’ interpretation of “professional cleaning”. The Millers’ realtor says professional cleaning means the carpet was to be cleaned by a professional carpet cleaning company. The MacLeans’ realtor says the home, including the carpet, was professionally cleaned by a cleaning service, and there was no mention of steam cleaning or shampooing of the carpets in the CPS, so that was not required. Here, I find the realtors’ statements are not helpful. First, because I find that neither realtor is a disinterested party, having represented their respective clients in the home sale that is the subject of this dispute, and second, because their competing interpretations of “professional cleaning” cancel each other out in any event.

16. The Millers submitted photographs of carpet in the home when they took possession. I find the photographs show carpet stains in an area that appears to have been

covered by an area rug. I also find the photographs show that the carpeted area previously covered by an area rug is noticeably lighter than the carpeted area that was not covered by an area rug. The Millers also submitted the invoice for the carpet cleaning on October 6, 2020, totaling \$446.25. The pre-clean inspection on the invoice noted light staining to the carpet, with “yellow spots, bleach spots, scrubbed spots”. As discussed further below, I find this evidence supports a finding that the carpets were not professionally cleaned.

17. I agree with the MacLeans that the CPS does not specifically indicate that the carpets must be steam-cleaned or shampooed. However, I also agree with the Millers that hiring a cleaner to vacuum the carpets is not professional cleaning. I find suggesting that it is, as the MacLeans do, strains credulity. I find that professionally cleaning requires cleaning the carpet itself, which I find requires the application of a cleaning product, be it steam or shampoo, to the carpet to remove dirt and stains. I find it is within ordinary knowledge that vacuuming the carpet, without more, is not sufficient to constitute professional cleaning. So, I find that the MacLeans failed to professionally clean the carpets, and in doing so, breached the CPS.
18. The Millers say they incurred \$593.40 in accommodation costs for two nights on October 5 and 6, 2020, while they waited for the carpets to be professionally cleaned. The Millers provided receipts confirming this amount. They say they could not move their furniture into the carpeted rooms, which including bedrooms, until the carpets were cleaned. The MacLeans question why the Millers required hotel rooms for two nights. They say steam cleaning only takes a few hours. I accept that the steam cleaning only takes a few hours. However, the undisputed evidence is that the Millers took possession on October 4, 2020, and I find the carpets were not cleaned until October 6, 2020, the date of the invoice. I find that waiting 2 days to get the carpet cleaned was not an unreasonable delay. In saying this, I place particular weight on text messages in evidence that indicate the Millers took steps on the possession date to arrange for professional carpet cleaners to attend as soon as possible. So, here, I find it was reasonable for the Millers to obtain two nights of accommodation for

themselves and their two children to allow for the carpets to be professionally cleaned.

19. 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 (here, the CPS) 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 this means the appropriate amount of damages is the costs the Millers incurred to have the carpets professionally cleaned (\$446.25), and two days accommodation (\$593.40), which totals \$1,039.63.

Windows

20. The CPS required the windows to be professionally cleaned. I find this required both the inside and the outside of the windows to be cleaned.
21. The Millers say the windows were not cleaned, as required by the CPS. In support of this, they submitted a photograph of one window on October 7, 2020. I find the photograph shows one window that appears dirty three days after they took possession. However, I cannot tell whether both the inside and the outside of the window is dirty. The Millers also submitted an October 21, 2020 quote from a window cleaning company for \$545.48, which includes the cost for both interior and exterior window cleaning. However, it appears the quote was provided over the phone, and did not indicate the current condition of the windows.
22. In Matthew MacLean's dispute response, he says the interior windows were cleaned, but the exterior windows were not, because that was not specifically listed in the CPS. Inconsistently, in the MacLeans' submissions, they say that windows were all cleaned, and any evidence of spots is likely from bird droppings that day. The MacLeans also submitted a statement from the hired cleaner, JS, who confirmed that they had 3 employees on site cleaning the whole house including hardwood floors, carpets, kitchens, bathrooms and windows. However, JS does not confirm whether the outside of the windows were cleaned as well.

23. While I find the MacLeans' window cleaning submissions inconsistent, it is the Millers who have the burden of proving the windows were not cleaned. While the Millers submitted one photograph of one window that appeared dirty three days after they took possession of the home, they did not submit any other evidence to show that the home's interior and exterior windows were not cleaned as required by the CPS on the date they took possession. Here, I find that without more, the Millers have not provided sufficient evidence to prove the home's windows were not cleaned. I also find that the Millers have not yet incurred any costs to clean the windows. So, given the above, I find the Millers' claim for window cleaning costs must fail.

Did the MacLeans' breach the damage warranty in the CPS?

24. It is undisputed that the MacLeans' warranted in the CPS that there was no hidden damage concealed by furniture. The warranty is reproduced above. The Millers say that when they took possession of the home, they discovered a stain on the living room flooring that had been concealed by furniture.

25. The MacLeans' do not dispute that there is a stain on the living room floor. In Olivia MacLean's Dispute Response, she says the MacLeans were aware of the office hardwood floor. I infer she means the stain on the office hardwood floor. She says she was not aware of the stain in the living room until they moved. In Matthew MacLean's Dispute Response, he says that the MacLeans were aware of the one stain and he "presumes there was another small one that they missed and we evidently missed". He says the Millers had access to the home 4 times after subject removal. I infer that Mr. MacLean suggests that the Millers ought to have known about the stain because of this. The MacLeans did not address the living room stain in their submissions.

26. The Millers and the MacLeans both submitted photographs of the living room at the time the Millers' viewed it. There is no stain visible on the living room floor. In the right hand corner of the photo, two baskets cover the floor to the right of the fireplace. The Millers also submitted a photograph taken on October 4, 2020, the date they took possession. I find that the photograph shows a large dark circular stain on the living

room floor, to the right of the fireplace, directly beneath where the baskets were sitting when the Millers' viewed the home. I find this evidence shows damaged flooring in the living room at the time the Millers took possession. I also find this evidence shows that the damaged flooring was not "readily visible" or "reasonably expected" by the buyers (here, the Millers) at the time they entered into the CPS. So, I find the MacLeans breached their warranty in section 3 of the CPS that there was no damage that was not readily visible or reasonably expected.

27. While Mr. MacLean suggests that the Millers ought to have known of the living room stain after their inspections, I disagree. Here, I find that the Millers reasonably relied on the MacLeans' warranty which stated that there were no stains that were not "readily visible". I find the Millers had not further obligation to investigate potential stains, in reliance on the MacLeans' warranty that there were none.
28. As noted above, in assessing damages, the Millers are entitled to be put in the position they would have been in if the CPS had been fulfilled and the warranty not broken. The Millers submitted in evidence a hardwood floor repair quote dated October 23, 2020 for \$420. The work listed in the quote is limited to the hardwood floor repairs required for the stain in the living room by the fireplace. I find this is the appropriate measure of damages, and the Millers are entitled to \$420 in damages for the MacLeans' breach of warranty.
29. In total, I find the Millers are entitled to \$1,459.63 in damages from the MacLeans for their breaches of the CPS, as detailed above.
30. The *Court Order Interest Act* applies to the CRT. The Millers are entitled to pre-judgment interest on the \$1,459.63 damages award from October 23, 2020, the date of the hardwood floor repair quote, to the date of this decision, which I find is reasonable in the circumstances. This equals \$5.02.
31. 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 Millers entitled to reimbursement of \$125 in CRT fees and \$25.85 in dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order the MacLeans to pay the Millers a total of \$1,615.50, broken down as follows:
 - a. \$1,459.63 as damages for breach of contract,
 - b. \$5.02 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$150.85, for \$125 in CRT fees and \$25.85 for dispute-related expenses.
33. The Millers are entitled to post-judgment interest, as applicable.
34. 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.

35. 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.

Leah Volkers, Tribunal Member

Amendment Notes: Paragraph 26 amended to correct an inadvertent party name error under the authority of section 64 of the CRTA.