



# Civil Resolution Tribunal

Date Issued: August 3, 2021

File: SC-2021-000195

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cherkas v. Reaume*, 2021 BCCRT 847

BETWEEN:

ROBERT CHERKAS and LINDA CARTER

**APPLICANTS**

AND:

NICOLE REAUME

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about a townhouse purchase and stained carpet.
2. The applicants, Robert Cherkas and Linda Carter, purchased a townhouse from the respondent, Nicole Reaume. The applicants say the townhouse's carpet had several bleach stains when they took possession of the house. The applicants say it would

cost over \$10,000 to replace the carpet but abandon the portion of their claim over \$5,000 to fit within the Civil Resolution Tribunal's small claims limit.

3. The respondent denies responsibility for the carpet stains. She says the stains were only noticed after the applicants' carpet cleaners came to the townhouse on December 15, 2020, the day before the applicants took possession of the house.
4. Mr. Cherkas represents the applicants. Ms. Reaume represents herself.

## **JURISDICTION AND PROCEDURE**

5. 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). 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. 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.
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.

## **ISSUE**

9. The issue in this dispute is whether the respondent must pay the applicants \$5,000 for replacing the damaged carpet.

## **EVIDENCE AND ANALYSIS**

10. In a civil dispute like this one the applicants must prove their claim on a balance of probabilities. I have considered the parties' submissions and weighed the provided evidence but only refer to that necessary to explain my decision.
11. The parties entered into a purchase agreement for the townhouse on October 7, 2020. The agreement said that the townhouse would be in substantially the same condition on the December 16, 2020 possession date as when the applicants viewed the house on October 4, 2020.
12. It is undisputed that the townhouse carpets are stained. Based on the applicants' submitted photos, I find at least 2 different types of carpet have small round dots of light or orange discolouration on grey and brown carpet. The discoloured areas appear on the carpet's edge, close to baseboards or a transition to hard flooring. The photos also show one larger faded or lighter discoloured area on a grey carpet, approximately 8 to 10 inches in diameter, about 2 feet away from the wall.
13. It is undisputed that the respondent allowed the applicants to have access to the house on December 15, 2020, the day before the possession date, to clean the carpets. Based on the December 15, 2020 invoice from Citrus-O-Carpet Care, I find the carpet cleaner observed wear and fading on the carpets, as well as small and big bleach stains, as part of their pre-inspection report. I infer this means the carpet cleaner saw the stains and discolouration before cleaning the carpet.
14. The respondent says the invoice appears unclear or changed. I infer this is because both "No" and "Yes" are checked off beside "any problem spots or stains" but the "no" box is scribbled out, and "bleach" is written in beside "yes". Given the cleaner's note about bleach stains and fading under the "pre-inspection notes" heading I find the

invoice is clear. I accept that the carpet cleaner observed what they believed to be bleach stains on the carpet prior to cleaning it. Regardless of the reason for the stain or discolouration, it is clear that the carpet had marks on it prior to the December 16, 2020 possession date. The relevant question is whether the marks were created after the applicants viewed the townhouse on October 4, 2020.

15. The respondent says the carpet was damaged many years before she sold the townhouse to the applicants. If that is true, then the townhouse was in the same state it was when the applicants viewed it on October 4, 2020 and the respondent did not breach the purchase agreement.
16. Given the applicants' argument that the respondent breached her agreement to leave the townhouse in the same condition it was when the applicants viewed it on October 4, 2020, I infer the applicants argue that the bleach stains or discolouration did not exist on October 4, 2020. As the primary applicant in the dispute, Mr. Cherkas did not specifically argue that the carpet was unstained on October 4, 2020. Neither did he provide a statement from Ms. Carter about the state of the carpets at the October 4, 2020 viewing.
17. I disagree with the respondent that the October 12, 2020 Home Inspection Report proves there was no previous carpet stains or discolouration. Rather, the report states that the floors are a combination of carpet, laminate, and tile. There is no comment about whether the carpet is stained or not. There is no indication that carpet stains or discolouration would be noted on the report, if found. I find the report is not determinative of whether the carpet was stained or discoloured as of October 4, 2020.
18. I disagree with the respondent that the Property Disclosure Statement is helpful in this dispute. While I agree the respondent answered "no" to the question "are you aware of any leakage or unrepaired damage", I find that question more likely refers to water damage rather than carpet stains or discolouration. I find the respondent's answer to this question does not prove the carpet was unstained at the time of the property viewing.

19. The respondent submitted a June 7, 2021 signed statement from S, the respondent's real estate agent. S said the townhouse was professionally cleaned on December 12, 2020. S walked through the house on December 14, 2020 and recalls that everything looked great, including the carpets. S said she did not see any stains on the carpets. She recalls telling the buyers' real estate agent on December 23, 2020 that she did not recall seeing any stains on the carpets during her walk through. Given that she discussed that very issue close in time to viewing the house, I accept S's later written statement that she did not see any stains on the carpets on December 14, 2020.
20. So, were the stains there to be seen but just unnoticed on October 4, 2020 or were they new stains created between October 4 and December 15, 2020? The respondent says the carpet was damaged "many years ago" but says the stains only came to light after the carpet cleaning. She says there is no possible way that the large stains were unnoticed by anyone. I infer the applicant argues that the pre-existing stains became noticeable only after the December 15, 2020 carpet cleaning, otherwise the stains would have been seen by S, or noted on the inspection report.
21. As noted above, it is up to the applicants to prove that the carpet stains and discolouration did not exist at the October 4, 2020 viewing, but were created after the viewing and before the December 16, 2020 possession date. Given the respondent's statement that the carpet stains were old and the applicants' lack of statements about the carpets when they viewed the house, I find it just as likely as not that the carpet stains and discolouration existed on October 4, 2020 but were not very noticeable until the December 15, 2020 carpet cleaning, as argued by the respondent. So, on balance, I find the applicants have failed to prove their claim.
22. 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. As the applicants were unsuccessful in their claim, they are not entitled to reimbursement of their CRT fees. I find the successful respondent is entitled to reimbursement of \$50 she paid in CRT fees. Neither party claimed dispute-related expenses.

## ORDERS

23. Within 14 days of the date of this order, I order the applicants to pay the respondent \$50 as reimbursement for CRT fees.
24. I dismiss the applicants' claims. The respondent is entitled to post-judgment interest on the \$50, as applicable.
25. 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.
26. 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