



Civil Resolution Tribunal

Date Issued: January 13, 2022

File: SC-2021-006028

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Greenwood v. Wu*, 2022 BCCRT 49

BETWEEN:

CLAYTON GREENWOOD

APPLICANT

AND:

LOUISE WU and ROBIN YANG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a residential home sale. The applicant, Clayton Greenwood, bought a townhouse from the respondents, Louise Wu and Robin Yang. Mr.

Greenwood alleges a fridge/freezer and hot water tank were not in “good working order” as of the May 29, 2021 possession date (which he discovered on June 5 and June 11, respectively), contrary to the parties’ contract of purchase and sale. Mr. Greenwood does not allege misrepresentation and relies solely on the contractual warranty. Mr. Greenwood claims a total of \$3,610.11, as reimbursement for replacement appliances.

2. The respondents say the fridge/freezer and hot water tank were working properly when they moved out on May 28, 2021. They say they have young children and would have immediately known if either appliance was not functioning properly.
3. The parties are each self-represented. For the reasons that follow, I dismiss Mr. Greenwood’s claims.

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). 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, 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 CRT considers appropriate.

ISSUES

8. The issues are:
 - a. Whether the hot water tank is an “appliance”,
 - b. Whether the fridge/freezer and hot water tank were not in “good working order” as of the May 29, 2021 possession date, and
 - c. Whether Mr. Greenwood is entitled to the claimed \$3,610.11 for replacement appliances.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Mr. Greenwood has the burden of proving his claims, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision.
10. The background facts are not disputed. Mr. Greenwood bought the townhouse from the respondents on April 20, 2021, with a May 26, 2021 closing date and a May 29, 2021 possession date. Mr. Greenwood’s offer was subject-free and so he did not have an inspection prior to purchase. Mr. Greenwood admits he did not “fully” move into the property until June 4, 2021.
11. The parties’ contract of purchase and sale sets out that the respondent sellers warrant that all “appliances will be in good working order upon possession”. I find this bound the respondent sellers, even though Mr. Greenwood chose not to have

the property inspected before his purchase. Contrary to the respondents' assertion, the principle of 'buyer beware' is not relevant for appliances, because the respondents warranted in the contract they would be in good working order as of the possession date.

12. Again, Mr. Greenwood does not allege misrepresentation and accepts the respondents may not have known about the problems. However, I agree with Mr. Greenwood that what matters is whether the appliances were in fact in "good working order", as their being so was what the respondent sellers agreed to provide in the parties' contract. Given this, I have not addressed the parties' submissions about the law of misrepresentation or 'buyer beware'.
13. It is undisputed the fridge/freezer was an appliance but the respondents say the hot water tank was not. A further issue is whether the alleged problems amount to the fridge/freezer and tank not being in "good working order" as of May 29, 2021.
14. First, was the hot water tank an "appliance"? An appliance is commonly defined as a piece of equipment, usually operated electrically, for domestic use (see for example dictionary.com). This clearly includes kitchen appliances, such as the fridge/freezer. I accept that a hot water tank is a plumbing fixture. However, this does not mean it is not also an appliance. The respondents did not make any submissions about why they say the hot water tank is not an appliance. I find it likely is, given the broad definition mentioned above and the fact it has been treated as such in various court and non-binding CRT decisions, such as *Cromwell v. Kim*, 2020 BCCRT 788.
15. Next, another issue is the timing of Mr. Greenwood's discovery of the alleged problems, which as discussed further below was several days after the possession date. The respondents say they relied on the fridge/freezer and hot water tank (for hot baths), and so they would have known if either was not working properly up until their departure on May 28, 2021, the day before the possession date.

16. I turn then to the relevant chronology, beginning with the fridge/freezer. Mr. Greenwood says he noticed the fridge/freezer was not working properly on June 5, 2021. In particular, the freezer was not freezing despite an ice tray having been filled and in the freezer for several hours. He says on June 6 he noticed the freezer was partially thawed, and after monitoring he noted the freezer's temperature fluctuated during the day. He says the same about the fridge's temperature. Mr. Greenwood also submitted photos showing the fridge/freezer's temperature and contents were not as they should be.
17. Mr. Greenwood hired an appliance technician, Handy Appliances, who inspected the fridge on June 8, 2021. He submitted a June 8, 2021 receipt for \$160.50 that shows Handy Appliances recommended "full replacement" of the fridge/freezer. Mr. Greenwood bought a new fridge/freezer on June 8, 2021 for \$1,125.06.
18. Based on the above, I accept the fridge/freezer was not in "good working order" as of June 5 and 6, 2021, when Mr. Greenwood discovered the issues. This is supported by the Handy Appliances receipt. However, the central issue is whether the fridge/freezer was not in good working order 7 days earlier on the May 29 possession date.
19. First, I acknowledge the respondents' text messages with Mr. Greenwood, which show he expressed satisfaction with the property on June 1. I find these messages unhelpful since Mr. Greenwood admittedly did not discover any issues until at least June 5.
20. Second, while I accept the respondents' evidence they bought a load of groceries they refrigerated and froze without issue on May 2, I place little weight on that fact given it was almost a month before the May 29 possession date.
21. Third, the respondents submitted a witness statement and email from their "move-out" cleaner Michelle Lopez who noted the appliances were cleaned inside and out on May 29. Ms. Lopez said she did not notice anything unusual while cleaning the fridge/freezer. I place little weight on this evidence because there is no evidence

Ms. Lopez likely would have been aware of a fluctuating temperature in an empty fridge/freezer.

22. Fourth, I place little weight on the respondents' submitted statement from their realtor John Ly who wrote the fridge/freezer and hot water tank were in working condition on May 29, 2021. I say this because Mr. Ly does not say he was present in the home or checked the appliances on May 29 and so there is no evidence that he actually knew the appliances' condition on May 29.
23. However, on balance, I find it likely the respondents would have noticed the fridge/freezer was thawing food and was not holding a cold enough temperature on May 27 and 28, given they were living in the home and undisputedly still using that appliance. I say May 27 and 28, because the evidence shows the respondents moved out at some point mid-day on May 28 and so the fridge/freezer may have already been empty on May 28, but I find it likely it was still in use on May 27.
24. Again, neither party alleges the other is being dishonest. The parties' text messages before and after this CRT dispute began were refreshingly civil. Neither party says they know when exactly the fridge/freezer began to malfunction. Mr. Greenwood does not particularly suggest the fridge/freezer was malfunctioning for a long period of time, and I find it unlikely the respondents and their family would have adapted to that for any significant period, given this was undisputedly their main fridge/freezer.
25. So, I find the issue here is what is most likely: the 2016 model fridge/freezer malfunctioned between May 27 and May 29, 2021, or, it malfunctioned between May 30 and June 5. Mr. Greenwood has the burden of proof and I find he has not shown it is more likely the fridge/freezer broke down in that 1 or 2 days before the May 29 possession date rather than in the longer 7-day period after the possession date. So, I find it unproven the fridge/freezer was not in good working order as of May 29, 2021 and I dismiss this aspect of Mr. Greenwood's claim.
26. I turn then to the hot water tank, which was undisputedly 7 years old at the time of sale. Mr. Greenwood says on June 11, 2021 he noticed a "small amount of water

pooling” in the tank’s drip pan, and that the tank’s side was rust-stained from where the water was dripping. Mr. Greenwood says this indicates the water had been dripping for some time.

27. Mr. Greenwood called Milani, a plumbing company, who he says advised him that only a replacement tank would solve the problem as a repair was not possible. I note that in a July 11, 2021 letter to the respondents, Mr. Greenwood advised he had a report from a plumber that the hot water tank was not in “proper working condition”. In his reply submission, Mr. Greenwood also says that when Milani attended it confirmed the hot water tank “needed immediate replacement”.
28. Yet, Mr. Greenwood did not submit any such opinion or report from Milani or any other plumber. Rather, he submitted only a June 14, 2021 Milani \$1,373.40 invoice for a new hot water tank. Parties are told to submit all relevant evidence, including any necessary expert opinion. Mr. Greenwood does not explain why he did not submit an opinion from Milani about the old hot water tank, including whether it was likely already malfunctioning as of May 29, 2021 or whether it needed full replacement.
29. Significantly, it was 13 days until Mr. Greenwood noticed the pooling water and rust stains and he does not say he did not have hot water. There is no evidence before me the hot water tank was leaking such that it damaged carpet or flooring. Rather, as noted, the issue is there was some water in the tank’s metal drip tray intended to sit underneath the tank and that there were rust marks on the tank’s lower edge. The difficulty for Mr. Greenwood is that I cannot conclude from this that the tank was not in good working order, and I find this is not within ordinary knowledge. In other words, I cannot tell that the water in the drip tray or even the rust marks meant the tank was malfunctioning. The fact that the tank has a dedicated “drip tray” does not support Mr. Greenwood’s position. I find this issue requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283). Again, there is no opinion in evidence from Milani or any other expert that the hot water tank was not in good working order as of May 29, 2021 (or even as of June 11, 2021).

30. On balance, I find Mr. Greenwood has failed to prove the hot water tank was not in good working order as of the May 29, 2021 possession date. While it may be that it was dripping water into its drip pan, I find that in itself does not prove it was not in good working order. I accept the respondents' undisputed submission that they had hot water without issue up until their departure on May 28, 2021. I note the respondents' photo indicating their young child had a bath on their last night at the property, which was May 27, 2021. I find this likely means the hot water tank was providing hot water at that time. Given the above, I also dismiss the hot water tank aspect of Mr. Greenwood's claim.
31. In summary, I accept Mr. Greenwood's evidence that as of June 5 the fridge/freezer was not in good working order. I also accept he discovered on June 11 some water pooling and rust stains on the hot water tank. The material point is that I find it unproven either appliance was not in good working order as of the May 29, 2021 possession date. So, I find Mr. Greenwood's claims must be dismissed.
32. 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. As Mr. Greenwood was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. The respondents did not pay CRT fees. No dispute-related expenses were claimed.

ORDER

33. I dismiss Mr. Greenwood's claims and this dispute.

Shelley Lopez, Vice Chair