



Civil Resolution Tribunal

Date Issued: February 25, 2022

File: SC-2021-005179

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Hoseyny*, 2022 BCCRT 207

BETWEEN:

MING SHEN LIU

APPLICANT

AND:

HALEH HOSEYNY and SAEED MOMTAZI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about cleaning and repair costs related to an apartment purchase and sale. The applicant, Ming Shen Liu, purchased an apartment from the respondents, Haleh Hoseyny and Saeed Momtazi. Dr. Liu says the respondents left the property in an unclean and damaged condition. Dr. Liu claims \$240 for cleaning and \$262.50 for repair costs, for a total of \$502.50.

2. The respondents deny Dr. Liu's claims. They say they cleaned the apartment and left it in a reasonable condition.
3. Dr. Liu is self-represented. Mr. Momtazi represents himself and Ms. Hoseyny .

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 respondents breach the contract by leaving the apartment in an unclean condition? If so, how much do they owe Dr. Liu?
- b. Did the respondents breach the contract by damaging the apartment walls? If so, how much do they owe Dr. Liu?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Dr. Liu, as the applicant, must prove his 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. It is undisputed that Dr. Liu viewed the property on March 30, 2021 and the parties signed the contract of purchase and sale (contract) the same day.
11. The contract included the following relevant terms:
 - Section 3 said the respondents would perform a professional steam cleaning and whole house cleaning by the completion date and send receipts for this work to Dr. Liu's real estate agent. Based on a plain reading of this section, and the requirement for receipts, I find that section 8 required both the steam cleaning and the whole house cleaning to be performed by professionals.
 - Section 4 said the completion date is May 31, 2021.
 - Section 5 said the date of possession is June 4, 2021.
 - Section 8 said the property would be in substantially the same condition as when viewed by Dr. Liu on March 30, 2021.
 - Section 18 said that there were no representations, warranties, guarantees, promises, or agreements other than those set out in the contract.

Cleaning costs

12. Dr. Liu submitted a September 28, 2021 statement from his real estate agent, TH. TH wrote that the respondents delivered a carpet cleaning receipt but not a whole house cleaning receipt. Based on TH's statement, I am satisfied that the respondents had the carpets professionally cleaned.
13. The respondents say that they cleaned the home. However, the respondents did not provide any evidence or submissions showing that it was professionally cleaned as required by the contract. Since the respondents did not dispute this, I find that they did not have the apartment professionally cleaned and that their failure to do so breached the contract.
14. TH's statement says the apartment was left in an unclean condition. TH says the kitchen and balcony floors were heavily stained and the window corners and walls were dirty. Dr. Liu submitted photographs to the CRT showing these areas which appeared to be unclean. Though the respondents say they cleaned the apartment, they did not provide any photographs showing its condition. Based on the photographs provided by Dr. Lui, I am satisfied the apartment was not left in a clean condition.
15. Dr. Liu provided a September 29, 2021 statement from MB, who says they are a professional cleaner. MB says the apartment's walls, appliances, windows and heaters needed to be cleaned. MB says they spent 6 hours cleaning the apartment on June 12, 2021 and they issued a \$240 cleaning invoice. Based on MB's statement and invoice, I find that Dr. Liu incurred \$240 in cleaning costs as a result of the respondents' failure to adequately clean the apartment as required by the contract. So, I find that the respondents owe Dr. Liu \$240 for cleaning costs.

Repairs

16. Dr. Liu also claims \$262.50 for wall repairs. Dr. Liu says the respondents left nails and holes in the walls. Dr. Liu also says attachments needed to be removed and the walls needed to be filled and touched up. The respondents say the holes were left

from their TV cabinet and they were reasonable wear and tear. The respondents also say that they painted the walls just before selling the apartment.

17. Based on the photographs provided, I find that the respondents left nails, holes and plastic and metal attachments in the walls as Dr. Liu claims. However, I find that the respondents did not breach the contract by doing so. I reach that conclusion because I find that the attachments are fixtures, which are considered part of the property and section 8 of the contract says that the property must be left in substantially the same condition as when viewed by Dr. Liu on March 30, 2021. Neither party provided evidence as to when the respondents placed the nails and attachments in the walls. However, I infer that this was likely done before Dr. Liu viewed the property on March 30, 2021. As such, I find that the respondents complied with the contract by delivering the property in the same condition as when viewed.
18. Further, there are no terms in the contract expressly requiring the respondents to repair nails or holes in the walls and section 18 of the contract says that terms cannot be implied to the contract. So, I find that the respondents did not breach the contract by leaving nails, holes and attachments in the walls and I dismiss this claim.
19. For the above reasons, I find that the respondents owe Dr. Liu a \$240 debt.

Interest, CRT fees and dispute-related expenses

20. The *Court Order Interest Act* (COIA) applies to the CRT. Dr. Liu is entitled to pre-judgment interest on the \$240 debt from June 12, 2021, the date of MB's invoice, to the date of this decision. This equals \$0.76.
21. 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. Since Dr. Liu was partially successful, I find that he is entitled to reimbursement of one-half of his CRT fees. This equals \$67.50. None of the parties claimed reimbursement of dispute-related expenses

ORDERS

22. Within 30 days of the date of this order, I order Ms. Hoseyny and Mr. Momtazi to pay Dr. Liu a total of \$308.26, broken down as follows:
 - a. \$240 in damages for cleaning costs,
 - b. \$67.50 in pre-judgment COIA interest, and
 - c. \$0.76 in CRT fees.
23. Dr. Liu is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Richard McAndrew, Tribunal Member