



Civil Resolution Tribunal

Date Issued: March 3, 2022

File: SC-2021-006674

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kovacs v. Haston*, 2022 BCCRT 235

BETWEEN:

TIM KOVACS

APPLICANT

AND:

CHRISTINA HASTON and SERBAN MIHAILESCU

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Tim Kovacs bought a condo from Christina Haston and Serban Mihaiescu. Mr. Kovacs claims that the respondents left the condo dirty, contrary to an express term in the parties' contract. He claims \$1,117.20 in damages, which includes \$594 in cleaning costs, \$23.20 in transportation costs to dispose of items left behind, and \$500 of Mr. Kovacs's personal time disposing of the items and cleaning the condo.

2. The respondents admit leaving certain items behind. They agree to pay the claimed \$23.20 in transportation costs. However, the respondents say that they comprehensively cleaned the condo and ask that I dismiss Mr. Kovac's remaining claims.
3. The parties are each 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are
 - a. Did the respondents breach the parties' contract by leaving the condo unclean?
 - b. If so, what are Mr. Kovacs's reasonable damages?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Kovacs as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On April 20, 2021, the parties entered into a contract for the respondents to sell the condo to Mr. Kovacs. The contract included a term that the respondents would "remove all possessions and leave the home and property clean". The possession date was July 1, 2021. The condo is 463 square feet with 1 bedroom and 1 bathroom.
11. The respondents rented out the condo before the sale. They say that they each spent a total of 10 hours on June 29 and 30, 2021, cleaning up after their tenant left. As mentioned above, they admit leaving behind a propane tank, vacuum cleaner, and ironing board. They thought Mr. Kovacs would appreciate the items. Since he clearly did not, the respondents have agreed to pay him the claimed \$23.20, which represents \$1 per kilometer that Mr. Kovacs drove to dispose of them.

12. Mr. Kovacs says that it was immediately obvious that the condo was not clean when he moved in. He emailed the respondents' realtor on July 1, 2021, calling the condo a "biohazard". Mr. Kovacs says that he and another person, MF, spent considerable time cleaning the condo. He says that he paid MF \$300 for their time, which is supported by an e-transfer in evidence.
13. Mr. Kovacs says that he could not get a professional cleaner to attend until July 5, 2021. On that day, a cleaner with Prostyle Cleaning did a 7 hour "deep clean" at \$40 per hour. The invoice came to \$294.00 after tax. The invoice contains no detail about what the cleaner did as part of the "deep clean".
14. In this dispute, Mr. Kovacs stands by his initial assessment of the condo. He says that the respondents did not sweep or mop the floors, wipe down any surfaces, or clean the windows, doors, bathroom, and sinks. He says there was broken glass on the floor inside and on the patio. He says there was dark staining on the floor and walls. He says there were toenail clippings on the floor and rotten ginger in the fridge.
15. The respondents say that they left the condo reasonably clean, which is all the contract required. The respondents rely on a previous CRT decision, *Calder v. Burtini*, 2021 BCCRT 808. In that dispute, the contract at issue had a clause that required the sellers to have the house professionally cleaned. The CRT member interpreted that clause as requiring the house to be reasonably clean, not perfectly clean. While the clause at issue here is different and other CRT decisions are not binding on me, I agree that the standard is reasonableness.
16. The parties each provided photos of the condo. I found the respondents' photos unhelpful because they were very blurry and did not show much of the condo.
17. As for Mr. Kovacs's photos, I accept that they show that certain parts of the condo were not perfectly clean. However, I find that Mr. Kovacs exaggerates certain aspects of the condo's state. For example, he says that the respondents did not even "attempt" to sweep or mop the floors, but the photos in evidence only show

debris in 2 small areas and underneath a washer and dryer. This makes me somewhat skeptical of Mr. Kovacs's evidence overall where it is not supported by other evidence. With that in mind, I turn to Mr. Kovacs's specific allegations.

18. First, I find that the photos clearly show that the following parts of the condo were not clean:

- Dust and debris in 2 small areas of the hardwood floor.
- Streaks on the wall behind and around the toilet.
- Grime at the bottom of the toilet bowl and on the floor behind the toilet.
- Discolouration on the bedroom carpet.
- Debris in the track of a hallway closet door.
- A dark outline of the tenant's headboard on the bedroom wall.

19. Mr. Kovacs also says that one photo shows a dark stain on the living room hardwood floor. I have reviewed this photo closely and do not see a stain, so I find this allegation unproven.

20. I find that Mr. Kovacs's photos also show that the outdoor windows were not fully clean. The parties dispute whether the contract required the respondents to clean these windows because the strata corporation cleans exterior windows. I find nothing turns on this because despite the streaks, I find that the outdoor windows were reasonably clean.

21. Mr. Kovacs also provided photos showing that the floor underneath a stacked washer and dryer and the inside of the air conditioner were both dirty. I find that it is unreasonable for Mr. Kovacs to expect the respondents to clean underneath a washer-dryer or inside an air conditioner.

22. Mr. Kovacs also provided evidence from 2 witnesses, BM (who helped him move) and MF (who helped him clean). It is unclear how BM and MF know Mr. Kovacs, but I infer from BM's statement and from MF's invoice that they were not there in a professional capacity. I find that they were likely friends or acquaintances, and therefore not entirely neutral.
23. BM said in a statement that the kitchen cupboards were coated in a "sticky, discoloured film", the floor "had not been cleaned", the living room walls had a "clear spatter" on them, and the bedroom had "extensive gunk on the carpet and walls".
24. Mr. Kovacs provided a July 1, 2021 \$300 invoice from MF for cleaning. MF's invoice says they cleaned kitchen cabinets, appliances, counters, and backsplash, but could not finish because of "extreme heat" during a heat wave. MF described heavy grease buildup on appliances and cabinets. According to bank records, Mr. Kovacs paid MF the next day. The invoice does not say how long MF worked for.
25. Despite my reservations about Mr. Kovacs's evidence, I find that he has proven that the walls, kitchen surfaces, and kitchen cabinets were not clean. I rely on the fact that Mr. Kovacs, MF, and BM all described similar grime or film in different parts of the condo. Given their descriptions, I find that it would have been difficult to capture this sort of uncleanliness in a photo.
26. There is no photographic or other corroborating evidence that there was glass on the floor, toenail clippings on the floor, or rotten food in the fridge. The respondents specifically deny that they left this type of uncleanliness. On balance, I find that Mr. Kovacs has not proven these allegations.
27. With that, the condo clearly was not perfectly clean. The question is whether the proven uncleanliness was unreasonable. On balance, I find that a reasonable person would find the level of uncleanliness unacceptable. I rely particularly on the film on the kitchen surfaces and the grime on the bathroom wall, floor, and toilet. I find that the respondents breached the contract by failing to leave the condo in a reasonably clean state.

28. I turn then to the appropriate remedy. I find that Mr. Kovacs's claimed damages for cleaning are unreasonable. Mr. Kovacs claims compensation for his own time, MF's time, and a professional cleaner. With respect to Mr. Kovacs's time, he claims for 10 hours for both cleaning and disposing of the items left behind. According to Mr. Kovacs, he drove to 2 places to dispose of the items, one 1.5 kilometers away from the condo and the other 10 kilometers away. I find that this likely took no more than an hour of his time, so most of the 10 claimed hours were for cleaning. MF's invoice does not say how they calculated their \$300 charge. In the absence of clear evidence, I infer that MF likely charged the same \$50 per hour that Mr. Kovacs charged for his own time, which works out to 6 hours. So, I find that he has claimed reimbursement for a total of over 20 hours of cleaning between MF, himself, and a professional cleaner. Given that only certain parts of the condo were unclean, I find that this is excessive for such a small condo. I find that the fact that Mr. Kovacs had difficulty finding a professional cleaner on short notice does not justify or explain the excessive amount of time claimed.
29. In the circumstances, I find that it was reasonable for Mr. Kovacs to hire a cleaner to do a deep clean of the condo. I find that the \$294 he spent on that clean is a reasonable amount to compensate him for the unclean condo. I dismiss his claims for reimbursement for his own time cleaning and MF's \$300 charge.
30. This leaves the portion of Mr. Kovacs's \$500 claim that is for his time spent disposing of the items. As noted above, the respondents have agreed to compensate him \$1 per kilometer for these tasks, so I order them to do so. They did not agree to pay additional compensation for his time. I find that \$1 per kilometer is well above the \$0.56 that the Canada Revenue Agency allowed for income tax purposes in 2021. With that, I find that he will be adequately compensated for this relatively minor inconvenience by the \$23.20 I have awarded. I therefore dismiss his claim for additional compensation for his time.
31. I therefore find that the respondents must pay Mr. Kovacs \$317.20 in damages.

32. The *Court Order Interest Act* (COIA) applies to the CRT. I find that Mr. Kovacs is entitled to pre-judgment interest on the disposal charges from July 1, 2021, a date I find reasonable in the absence of evidence about when he disposed of the items. I also find that Mr. Kovacs is entitled to pre-judgment interest on the cleaning charge from July 5, 2021. Together, this equals \$0.94.
33. 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. Mr. Kovacs was partially successful, so I find he is entitled to reimbursement of half of his \$125 in CRT fees, which is \$62.50. He did not claim any dispute-related expenses. The respondents did not claim any dispute-related expenses or pay any CRT fees.

ORDERS

34. Within 30 days of the date of this order, I order the respondents to pay Mr. Kovacs a total of \$380.64, broken down as follows:
- a. \$317.20 in damages,
 - b. \$0.94 in pre-judgment interest under the COIA, and
 - c. \$62.50 in CRT fees.
35. I dismiss Mr. Kovacs's remaining claims.
36. Mr. Kovacs is entitled to post-judgment interest, as applicable.
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.

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.

Eric Regehr, Tribunal Member