



Civil Resolution Tribunal

Date Issued: March 23, 2022

File: SC-2021-005986

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bendfeld v. Ravlic*, 2022 BCCRT 324

BETWEEN:

KIM BENDFELD

APPLICANT

AND:

MATT RAVLIC also known as MATTHEW RAVLIC and ZOI LIVIA
PETROPOULOS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Kim Bendfeld, purchased an apartment from the respondent, Matt Ravlic, also known as Matthew Ravlic. The respondent Zoi Livia Petropoulos was Mr. Ravlic's real estate agent for the sale.

2. Mr. Bendfeld says 1 primary closet door was missing and the second door was damaged when he took possession of the apartment. He says the respondents concealed this and misrepresented the existence and condition of the closet doors. He claims \$2,362.50 for closet door replacement costs.
3. The respondents deny any misrepresentation or wrongdoing. They say the apartment was sold in the same condition as it was when it was viewed, with only 1 primary closet bedroom door which had been removed and was stored in the hallway closet.
4. All parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
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.

PRELIMINARY ISSUES

9. In his submissions Mr. Bendfeld referred to several statements the respondents allegedly made during the facilitation stage of this dispute. He also submitted as evidence his summary email setting out what occurred at the settlement meeting held between the parties and a CRT facilitator. Under section 89 of the CRTA, information provided during the dispute's facilitation stage is confidential and not admissible as evidence unless all parties consent, which I find is not the case here. So, I have not considered Mr. Bendfeld's summary facilitation meeting email and his submissions about the respondents' statements during the facilitation process.
10. Mr. Bendfeld asks the CRT to demand the respondents produce any competing offers received during the apartment sale. I find such offers are irrelevant to this dispute, which is solely about whether the respondents are responsible for the closet door replacement costs. So, I decline to order the respondents to disclose any competing offers.

ISSUES

11. The issues in this dispute are:
 - a. Did the respondents misrepresent the state of the bedroom closet doors?
 - b. Are the doors a patent defect the respondents actively concealed?
 - c. If either is "yes" what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Mr. Bendfeld must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, with the exception of the confidential facilitation information noted above. In my decision I refer only to the evidence necessary to explain and give context to my decision.
13. Mr. Bendfeld viewed the apartment on March 27, 2021. Mr. Bendfeld and Mr. Ravlic entered into a sales agreement, dated March 27, 2021. Mr. Bendfeld took possession of the apartment on May 31, 2021. None of this is disputed.
14. It is undisputed, and the evidence shows, that the MLS listing for the apartment included photos showing 2 closet doors installed in the primary bedroom. It is also undisputed there were no doors installed on the primary bedroom closet when Mr. Bendfeld viewed the apartment on March 27, 2021. Further, it is undisputed that only 1 of the 2 closet doors was in the apartment, but not installed on the closet, when Mr. Bendfeld took possession on May 31, 2021.
15. The sales agreement between Mr. Bendfeld and Mr. Ravlic included a condition that the apartment would be in substantially the same condition on the May 31, 2021 possession date as when viewed by Mr. Bendfeld on March 27, 2021. It is undisputed that Mr. Bendfeld did not have the property inspected before completing the purchase. The agreement contained no conditions about the primary bedroom closet doors, or any other closet doors.

Misrepresentation

16. The principle of “buyer beware” generally applies to home sales. A buyer is required to make reasonable pre-purchase enquiries about the property. Exceptions include negligent or fraudulent misrepresentations and the seller’s duty to disclose known latent defects (see *Nixon v. MacIver*, 2016 BCCA 8).

17. In *Ban v. Keleher*, 2017 BCSC 1132, the court said that in order to prove fraudulent misrepresentation in the purchase and sale of a residential property, the applicant must show the respondent knowingly or recklessly made a false representation to the applicant intending the applicant to act on that representation. The applicant must also show the false representation induced them to enter the contract and that they suffered a detriment. I find Mr. Bendfeld has not proven fraudulent misrepresentation because there is no indication that he was persuaded to buy the apartment for the agreed upon price, based on the existence or condition of the closet doors.
18. To prove negligent misrepresentation, Mr. Bendfeld must establish the respondent negligently made an untrue, inaccurate or misleading statement to the applicant, that the applicant reasonably relied on the statement which resulted in damages (see: *Hanslo v. Barry*, 2011 BCSC 1624).
19. Mr. Bendfeld says the respondents misrepresented the state of the primary bedroom closet doors in the MLS listing by showing 2 installed closet doors in the photos. The MLS listing specifically included a statement that the information given should not be relied upon without verification. Further, it is undisputed the MLS listing was posted before Mr. Bendfeld viewed the apartment on March 27, 2021. Mr. Bendfeld also undisputedly observed the bedroom closet had no installed doors. So, I find Mr. Bendfeld could not reasonably have relied on the MLS listing photo to believe the bedroom closet had 2 installed doors.
20. Mr. Bendfeld says he asked Ms. Petropoulos about the absent closet doors on March 27, 2021 in the building lobby, after viewing the apartment. He says Ms. Petropoulos told him both closet doors were in the apartment and needed to be reinstalled. Ms. Petropoulos denies this. She says she told Mr. Bendfeld that 1 door had been removed years ago and that the remaining closet door was in the apartment's shoe closet.
21. It is undisputed that Mr. Bendfeld's agent, DH, was present during the March 27, 2021 conversation. In his November 26, 2021 signed statement, DH says he did not recall Ms. Petropoulos informing him and Mr. Bendfeld about a missing closet door. He says

on possession day it was clear there was 1 door missing but says nothing further about the closet doors. Contrary to Mr. Bendfeld's argument, I find DH's statement does not support his recollection of the conversation. Rather, DH provides no evidence about what Ms. Petropoulos said about the closet doors.

22. As both Mr. Bendfeld and Ms. Petropoulos are parties in this dispute, they both have a vested interest in the outcome. So, I give each of their submissions about what was said on March 27, 2021 equal weight. DH's statement supports neither party. As noted above, Mr. Bendfeld has the burden of proving his version of events is more likely than not the correct one. Given the evidentiary tie here, I find he has not proven Ms. Petropoulos misrepresented the state of the closet doors to him on March 27, 2021. I also find Mr. Bendfeld has not proven that Mr. Ravlic misrepresented the closet doors at all or through his agent, Ms. Petropoulos. So, I find Mr. Bendfeld has not established negligent misrepresentation.

Patent Defect

23. Patent defects can be discovered through inquiry or reasonable inspection. A seller does not have to disclose patent defects to a buyer but cannot actively conceal them (see *Cardwell v. Perthen*, 2007 BCCA 313).
24. Mr. Bendfeld says the respondents actively concealed that 1 closet door was missing and the other was damaged. He says he did not discover this until he took possession of the unit on May 31, 2021.
25. As noted above, Mr. Bendfeld acknowledges that he saw no closet doors in the bedroom when he viewed the apartment on March 27, 2021. Ms. Petropoulos says she removed the 1 remaining door and placed it in the hall closet and Mr. Ravlic confirms he saw the door in the hall closet before the March 27, 2021 viewing. Mr. Bendfeld does not address these statements or otherwise indicate whether he saw the bedroom closet door in the hall closet. Whether he saw the single closet door or not, I find it was there to be seen as it is reasonable to expect a prospective buyer to open closet doors. I further find it was easily discoverable that there was only 1 single

bedroom closet door in the apartment and to see the state of that door. In other words, I find the respondents did not actively conceal that 1 door was missing, or whether the existing door was damaged.

26. Mr. Bendfeld argues the respondents concealed the missing and damaged closet doors by not allowing him to view the apartment again between March 17 and May 31, 2021. I find that irrelevant to Mr. Bendfeld's claim, given that the condition of the doors was there to be seen by Mr. Bendfeld when he viewed the apartment.
27. Mr. Bendfeld also argues the respondents removed 1 of the doors and damaged the other between the March 27, 2021 viewing date and the May 31, 2021 possession date but provides no supporting evidence. Specifically, he has not shown there were 2 closet doors present when he viewed the apartment, or what the condition of the doors were. So, I find Mr. Bendfeld has failed to prove the closet doors were not in the same condition on the possession date as they were at the viewing date, as required by the sales agreement.
28. In summary, I find Mr. Bendfeld has failed to prove either respondent fraudulently or negligently misrepresented, or actively concealed, the missing and damaged bedroom closet doors. I also find he has not proven any breach of the sales agreement requirement that the closet doors be in the same condition on the possession date as they were on the viewing date. I dismiss Mr. Bendfeld's claims.
29. Given my conclusion, I find I need not specifically consider whether Ms. Petropoulos (as Mr. Ravlic's real estate agent) would be responsible for Mr. Bendfeld's claimed damages had he proved them.
30. As Mr. Bendfeld was unsuccessful in his claims, I find he is not entitled to reimbursement of his paid CRT fees under section 49 of the CRTA and CRT rules. As the successful parties, the respondents paid no fees and claimed no dispute-related expenses.

ORDER

31. I dismiss Mr. Bendfeld's claims and this dispute.

Sherelle Goodwin, Tribunal Member