



Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-008463

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Doad v. Saligari*, 2022 BCCRT 460

BETWEEN:

HARWINDER SINGH DOAD and SWARAN SINGH PARMAR

APPLICANTS

AND:

BRUNO SALIGARI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a residential home sale. The respondent, Bruno Saligari, sold a house to the applicants, Harwinder Singh Doad and Swaran Singh Parmar. The

applicants say the respondent failed to provide the house keys. The applicants also say when they entered the home, they discovered 2 broken windows and a missing door to a backyard shed. They also say there was garbage everywhere. The applicants claim a total of \$3,590.45 in damages, discussed below.

2. The respondent says the home was sold “as is.” He says the windows were broken when he bought the property and when the applicants viewed it. He says the home was in the same condition as when they made their offer, and that the only condition was that he remove an oil tank, which he did. Mr. Saligari says the tenant had keys, not him. Mr. Saligari says the shed was the tenant’s and not included in the home sale. Mr. Saligari says he owes nothing.
3. Harwinder Singh Doad represents the applicants. Mr. Saligari represents himself.

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). CRTA section 2 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. 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. In some respects, the parties in this dispute call into question each other’s credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. CRTA section 42 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. Was the home sold on an “as is” basis?
 - b. If not, are the applicants entitled to proven damages for broken windows, a missing shed door, replacement locks, garbage clean-up, and 6 days for rent and storage due to delayed occupancy?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. In this dispute, the applicants claim compensation for the following:
 - a. \$700 – for 6 days of rent and storage for their belongings, because the home’s tenant did not vacate on August 31, 2021 as required under the end of tenancy notice given by Mr. Saligari.

- b. \$1,905.92 for estimated repair of 2 broken windows.
 - c. \$84.53 for replacement of locks, because Mr. Saligari and the tenant did not provide the home's keys.
 - d. \$100 to replace 2 backyard shed doors.
 - e. \$800 for disposing of garbage and cleaning the home.
11. The February 2021 MLS listing for the home noted it was tenanted and that it was being sold on an "as is, where is" basis. The MLS listing was not incorporated into the parties' later April 2021 contract, discussed below. So, I find the MLS "as is, where is" condition is not a binding contractual term. However, it does give some indication of the home's poor condition when the applicants viewed it on April 13, 2021.
12. On April 15, 2021, the parties signed a contract of purchase and sale (CPS). Contrary to the respondent's assertion the home was sold on an "as is" basis, there is no "as is, where is" term in the CPS. Instead, the CPS said the property and all included items would be in "substantially the same condition" on the August 1, 2021 possession date as when viewed by the applicants on April 13, 2021.
13. The significant difficulty for the applicants is they submitted no supporting evidence of the alleged damage, such as photos of the extent of the garbage, or the missing shed doors, or the broken windows. Similarly, they submitted insufficient evidence that these issues were not present when they viewed the home on April 13, 2021. In particular, Mr. Saligari's realtor said the home was a "handyman special" and needed total renovations, and that the house was a "total mess" with a cracked front living room window. The applicants' own realtor said she recalled 1 broken window but did not recall the listing showing a crack in the front window as Mr. Saligari says it did. However, the applicants' realtor does not say the home was in a different condition on possession than it was at the time of viewing.

14. Next, the CPS did not require garbage removal or clean-up. It also did not require Mr. Saligari to provide keys. While I accept the backyard shed itself was included under the CPS terms, there is no evidence it was not missing a door when the home was viewed. There is also no evidence to support the claimed \$100 cost to replace the doors.
15. Next, it is not clear to me that the tenant's failure to vacate on time is Mr. Saligari's responsibility. Under section 49 of the *Residential Tenancy Act*, he provided the notice required to end the tenancy effective August 31, 2021. However, given my ultimate conclusion that the applicants have not proved their claim, I do not need to resolve this issue.
16. Significantly, the applicants submitted no evidence to support the claimed cost to repair or fix the issues. They also submitted no evidence to support their claim that they had to pay rent or pay for storage of their belongings for 6 days until the home's tenant vacated. Given the absence of the above clearly relevant evidence, I dismiss the applicants' claims.
17. 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 the applicants were unsuccessful, I dismiss their claim for reimbursement of paid CRT fees. The respondent did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

18. I dismiss the applicants' claim and this dispute.

Shelley Lopez, Vice Chair