



Civil Resolution Tribunal

Date Issued: April 22, 2022

File: SC-2021-009427

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Deeley v. Bagherzadeh*, 2022 BCCRT 469

B E T W E E N :

MICHELLE DEELEY

APPLICANT

A N D :

SHIMA BAGHERZADEH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a damaged stovetop. The applicant, Michelle Deeley, says the respondent, Shima Bagherzadeh, damaged Ms. Deeley's stovetop by turning on an element with a pan on top and forgetting about it. At the relevant time, the parties were briefly roommates. Ms. Deeley seeks a total of \$2,200 for a replacement range

and accessories. Ms. Bagherzadeh denies turning the stove on, saying it was Ms. Deeley who turned it on and left the home.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
4. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
5. Section 42 of the CRTA says that 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.

6. 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

7. The issues in this dispute are who is responsible for the stovetop's damage and whether Ms. Deeley is entitled to \$2,200 in damages.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, as the applicant, Ms. Deeley must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The parties are former neighbours and in September 2021, Ms. Bagherzadeh moved into a room in Ms. Deeley's home temporarily. The damage to the stovetop in question happened on either December 8 or December 9, 2021, but I find nothing turns on the exact date. My reasons follow.
10. The main details of the way the stovetop was damaged are not disputed. Ms. Deeley was running her stove/oven combination range's self-cleaning oven feature. To "freshen the stale air" in the kitchen upon its completion, Ms. Deeley placed a frying pan with lemon and cinnamon sticks on one of the elements. Ms. Deeley says the element was off, and that the elements are automatically deactivated during the range's self-clean mode. Ms. Deeley further says if an element is left turned on during the self-clean session, it will automatically turn back on once the cleaning is done.
11. Around 12:00 pm and while there was still at least an hour left on the self-cleaning session, Ms. Deeley had to leave for an appointment. She says she asked Ms. Bagherzadeh through a closed bedroom door if Ms. Bagherzadeh would simmer the

lemons in the frying pan once the oven was finished cleaning. Ms. Deeley says Ms. Bagherzadeh acknowledged her request by responding “sure”.

12. When Ms. Deeley returned from her appointment around 4:00 pm, she says the kitchen was full of smoke and the smell of burning metal. She says the frying pan had been left on an activated element and burned significantly, leaving marks on her glass stovetop. The overhead microwave hood fan was also on. Ms. Deeley says that Ms. Bagherzadeh turned on the element and the microwave hood fan and forgot about them, resulting in the damage. Ms. Deeley says the microwave hood fan would not turn on automatically.
13. Ms. Deeley seeks a total of \$2,200: \$2,122.74 for a new range, and \$77.26 for accessories. It is undisputed that the current range has been discontinued and parts to replace the stovetop are unavailable. I note there is no indication the range no longer works, and it appears to be cosmetic damage only.
14. In contrast, Ms. Bagherzadeh says she never touched the stove and Ms. Deeley must have left the element on during the self-cleaning session, so it turned back on automatically after the session ended, resulting in the burnt pan and stovetop. Ms. Bagherzadeh also says the hood fan must have turned on automatically due to the burning pan. She denies turning either on. Ms. Bagherzadeh acknowledges Ms. Deeley asked her to turn on the element after the oven had finished self cleaning. However, Ms. Bagherzadeh said when she went into the kitchen, the self-cleaning had not yet finished, so she went back to her room as the cleaning fumes made her feel nauseous. Ms. Bagherzadeh says she fell asleep until Ms. Deeley came home and woke her up.
15. Ms. Deeley submitted a letter from Farzad Barazandeh, Sales Manager at Trail Appliances, who was shown pictures of the damaged stovetop and gave the opinion the damage was not a result of the range’s self-cleaning oven feature, but was due to an element being left on with something on it. I agree, but I find Mr. Barazandeh’s opinion does not assist me in determining who turned the element on.

16. Essentially, I have Ms. Deeley saying she left the stove element off when she left the home, and Ms. Bagherzadeh saying she also never turned on the element. Additionally, I find the fact the microwave hood fan was on does not mean it was turned on by Ms. Bagherzadeh. Although Ms. Deeley says her hood fan would not turn on automatically, she did not provide any evidence in support of that claim, such as the manual for the hood fan. As noted above, the burden of proof is on Ms. Deeley to show that Ms. Bagherzadeh was responsible for the range's damage. I find she has not met that burden. I find it is equally likely Ms. Deeley accidentally left the element on during the self-cleaning session and was unaware she did so before she left the home with the range unattended. Therefore, I find Ms. Deeley is not entitled to reimbursement for a new range and accessories.
17. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Deeley was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. Ms. Bagherzadeh did not pay tribunal fees or claim any dispute-related expenses.

ORDER

18. I order Ms. Deeley's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair