



Civil Resolution Tribunal

Date Issued: May 6, 2022

File: SC-2021-008933

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yang v. Ducas*, 2022 BCCRT 543

BETWEEN:

FANGYI YANG

APPLICANT

AND:

JOHN DUCAS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the condition of a home after its sale. The applicant, Fangyi Yang, bought a home from the respondent, John Ducas. Ms. Yang says the home was not properly cleaned and there was various damage to it when she took possession. She seeks \$4,160 to clean and the repair the home's deficiencies.

2. Mr. Ducas said the home was professionally cleaned and was in substantially the same condition as when it was viewed by Ms. Yang, as required by the contract. He seeks this dispute be dismissed.
3. Ms. Yang is represented by a friend. Mr. Ducas is 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. 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. 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.
6. 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.
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.

ISSUE

8. The issue in this dispute is whether Mr. Ducas breached the parties' contract by leaving the home in an allegedly unclean and damaged condition, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Yang must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note Ms. Yang did not provide any reply submissions, despite being given the opportunity to do so.
10. The parties entered into a contract of purchase and sale (CPS) on April 30, 2021, for Ms. Yang's possession of the property on September 1, 2021. The CPS included the following relevant terms:
 - a. The seller Mr. Ducas warrants that all electrical, gas and water fixtures and fittings, and all appliances included in this contract will be in proper working order as of the possession date and the seller will remove all personal belongings and garbage from the property leaving the home, yard, and shed in a clean professional manner.
 - b. The property and all included items will be in substantially the same condition on possession as when viewed by Ms. Yang on April 30, 2021.
 - c. "Included items" are fixtures, blinds, windows, carpeting, electric, plumbing, HVAC fixtures, washer and dryer, fridge, stove, dishwasher, microwave, refrigerator, smoke alarm, stove, window drops/cover, and all sets of keys, but excluding the tenant's washer and dryer and shed.

11. On May 14, 2021, the parties signed a CPS Addendum (deficiency addendum) where Mr. Ducas agreed to repair several items at his expense, with the repair work to be inspected by Ms. Yang before possession. The deficiency addendum included fixing a bathroom exhaust fan, inoperable windows, broken stucco, mould, water damage in the garage, moisture and mould under the primary bathroom tiles, repairing damaged wood/baseboards around the fridge and drywall in the basement, fixing broken weather stripping at the patio door, ensuring the primary bedroom fireplace was operable, and clearing the upstairs bedroom bathtub drain.
12. Ms. Yang alleges the following breaches of the CPS with her valuations for each in brackets:
 - a. Home was not professionally cleaned (\$800),
 - b. Backyard fountain not cleaned (\$300),
 - c. Broken garburator (\$160),
 - d. Garage not cleaned and garbage not picked up (\$300),
 - e. Broken refrigerator (\$300),
 - f. 2 broken shower doors in primary bathroom (\$800),
 - g. 7 broken sockets and wall plates in basement (\$400),
 - h. Failure to patch and paint drywall (\$400),
 - i. Damaged drywall and baseboard around fridge (\$300), and
 - j. Broken stucco and holes in garage (\$400).
13. The values associated to each item by Ms. Yang total the \$4,160 claimed in this dispute.

14. For the kitchen drywall and baseboard and broken garage stucco and holes complaints (items i and j), Ms. Yang argues these formed part of the deficiency addendum and were not completed by Mr. Ducas. In response, Mr. Ducas says his realtor, CL, along with Ms. Yang and her realtor, Q, performed a walk-through of the property on August 27, 2021, days before possession. Mr. Ducas and CL say that CL and Q went through each deficiency in detail and Q was satisfied the items had been repaired. Ms. Yang says although some of the repairs were done on August 27, 2021, they were not all complete. Notably, Ms. Yang did not provide any evidence from Q about the walk-through, or the home's condition before and after the possession date. Parties are told to submit all relevant evidence. Here, I draw an adverse inference against Ms. Yang for not providing a statement from Q, particularly given Mr. Ducas set out his position about Q's satisfaction that the repairs were completed at the outset of this proceeding. Although Ms. Yang submitted photos of some drywall and stucco damage, they are quite close up and I am unable to determine if these were in fact the same areas as listed in the deficiency addendum, or some other damage. I find Ms. Yang has not shown Mr. Ducas breached the deficiency addendum regarding these items.
15. For the allegedly broken refrigerator and garburator (items c and e), I note these were not included in the CPS's "included items" section. The refrigerator at issue is a "mini bar fridge", not one of the two units' main refrigerators which were specifically listed as "included items" Mr. Ducas warranted to be in proper working order. I find there was no representation that these items would be in working order on the possession date.
16. For the 2 shower doors (item f), Ms. Yang claims \$800 for their repair. The invoice in evidence indicates "master bedroom toilet roof fell off the hood and showroom damaged glass sliding door" (quote reproduced as written), with an \$800 charge. The photos submitted by Ms. Yang show 2 sliding glass shower doors that are not on tracks, but do not show any damage. I find Ms. Yang has not proven there was damage to these doors requiring repair.

17. For the sockets and general drywall complaints (items g and h), Ms. Yang says she had to pay \$400 each to fix these items, for a total of \$800. Mr. Ducas says Ms. Yang spent 6 hours with an inspector at the home on May 14, 2021, resulting in the deficiency addendum, and as noted did a final walk-through of the property on August 27, 2021, days before her September 1, 2021 possession date. I note the deficiency addendum does not mention any sockets or general drywall issues, other than the kitchen and garage complaints specifically discussed above. Also, significantly, despite having a lengthy inspection completed on May 14, 2021, which Ms. Yang does not deny, no inspection report was submitted as evidence. I find this inspection report likely would give valuable evidence about the home's condition when it was viewed by Ms. Yang, before the sale completed.
18. I find the inspection report would likely also shed light onto whether the mini bar fridge, shower doors, and garburator were in substantially the same condition as when Ms. Yang viewed the home. Again, parties are told to submit all relevant evidence. Again, I draw an adverse inference against Ms. Yang for failing to submit the inspection report. Given this, I find the inspection report would have noted the above issues, and that Ms. Yang agreed to purchase the property despite them. I find she is not entitled to compensation for the above items.
19. Finally, Ms. Yang argues the home and yard were not professionally cleaned and that Mr. Ducas' tenants left garbage around (items a, b, d). In total, Ms. Yang claims \$1,400 for this: \$800 to have the home professionally cleaned, \$300 to clean the backyard fountain, and \$300 for garbage pick-up. The parties agree the CPS required the home be left in a "clean professional manner", and specifically required that "all personal belongings and garbage" be removed from the home and yard. Ms. Yang submitted a large volume of photos about the home's cleanliness, which I accept show garbage and household items still in the garage and home, including drawers and cupboards full of left behind items in the kitchen and some closets. Photographs also show dirty carpets, dirty walls, and garbage strewn about the backyard.

20. In response, Mr. Ducas provided a receipt from one of the tenants showing they paid \$560 for cleaning on July 30, 2021. It is unclear how many tenants were living in the home, but from the evidence it appears there were at least 2, maybe 3, separate units. There is only one cleaning receipt in evidence. Mr. Ducas also provided an email from his property manager DD who stated that one tenant “did leave the suite very clean”. I am unable to determine which tenant paid for cleaning or which tenant DD says left the home clean, or whether they were the same tenant. In any event, based on the photos, I find the home was not left in a “clean professional manner” as required by the CPS. I also find personal belongings and garbage were left behind, contrary to the CPS.
21. Ms. Yang submitted various receipts for cleaning. One dated September 5, 2021 invoices \$960 for “whole house cleaning and carpet steam shampoo”. A second dated September 7, 2021 invoices \$567 for “2 kitchen 4 bathroom and all appliance cleaning fee”. A third dated October 2, 2021 invoices \$300 for “clean garages and rubbish”. Ms. Yang does not explain the difference between the first 2 receipts, or why the kitchens and bathrooms would not be included in the “whole house cleaning”. Additionally, I note Ms. Yang only claims \$800 for the house cleaning. Ms. Yang did not provide any evidence about the allegedly dirty “backyard fountain”, such as a photo of the fountain. So, I find Ms. Yang is entitled to the claimed \$800 for house and carpet cleaning, plus \$300 for the garage clean and garbage removal. This totals \$1,100.
22. Although Ms. Yang submitted an invoice for this cleaning and garbage removal, the invoice does not indicate whether it has been paid. So, I find pre-judgment interest is not applicable.
23. 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. Yang was only partially successful, I find that she is entitled to reimbursement of half her paid tribunal fees, for a total of \$87.50. No dispute-related expenses were claimed.

ORDERS

24. Within 30 days of the date of this decision, I order the respondent, John Ducas, to pay the applicant, Fangyi Yang, a total of \$1,187.50, broken down as follows:
- a. \$1,100 in damages, and
 - b. \$87.50 in tribunal fees.
25. Ms. Yang is also entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Andrea Ritchie, Vice Chair