



# Civil Resolution Tribunal

Date Issued: June 29, 2022

File: SC-2021-004024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Curran v. Travas*, 2022 BCCRT 751

BETWEEN:

SARAH CURRAN

**APPLICANT**

AND:

MCNOLES TRAVAS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The applicant, Sarah Curran, purchased a townhouse from the respondent, McNoles Travas. Ms. Curran says that upon possession she found a broken refrigerator drawer tray, dishwasher and washing machine odours and dirt, and generally a dirty townhouse. Ms. Curran says this breached the parties' sales agreement. She claims a total of \$1,139.02 for cleaning costs and replacing the refrigerator part.

2. Mr. Travas denies any wrongdoing. He says the dishwasher and washing machine were fine at the time of inspection and that he had the house cleaned by a former professional cleaner. Mr. Travas also says Ms. Curran duplicated her claim about the appliances. I infer he asks that the dispute be dismissed.
3. Both parties represent themselves.

## **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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **PRELIMINARY ISSUES**

8. Firstly, Ms. Curran initially named Mr. Travas' real estate agent as an additional respondent in this dispute but withdrew her claim against the real estate agent during the facilitation stage of the CRT process. So, I have amended the style of cause above to remove the real estate agent as a party to this dispute.
9. Secondly, Ms. Curran submitted several photos in a format that I could not open. At the CRT staff's request, Ms. Curran resubmitted her photos. I did not provide copies of those newly submitted photos to Mr. Travas, as I find they were originally submitted photos, only in a different format. Before they provide final submissions, parties are told to contact the CRT if they cannot open or view any evidence submitted. As Mr. Travas did not contact the CRT, I infer he was able to open Ms. Curran's originally submitted photos although I was not. I have not considered the 1 new photo of the microwave plate Ms. Curran submitted as Mr. Travas did not have the opportunity to see it or make submissions on it.
10. Thirdly, Ms. Curran submitted evidence about items left behind and costs to dispose of those items. She also submitted evidence about broken lights, missing light bulbs, and a drywall hole. However, she made no claim for repair costs or disposal costs in her Dispute Notice.
11. To the extent Ms. Curran now claims these extra costs, I find it would be procedurally unfair to consider them in this dispute. This is because Mr. Travas had no notice of these extra claims and therefore did not have the opportunity to provide evidence to defend against those claims. So, I will not consider repair or garbage disposal costs in this dispute.

## **ISSUE**

12. The issues in this dispute are:
  - a. Did the parties' agreement require Mr. Travas to professionally clean the house and appliances?

- b. Did Mr. Travas breach the agreement and, if so, what is the appropriate remedy?
- c. Is the fridge drawer tray cover missing or broken and, if so, is Mr. Travas responsible to pay for its replacement?

## **EVIDENCE AND ANALYSIS**

- 13. In a civil proceeding like this one the applicant Ms. Curran must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, but only refer to that necessary to explain my decision.
- 14. According to the parties’ contract of purchase and sale, Ms. Curran viewed the townhouse on February 27, 2021. On March 1, 2021, Mr. Travas accepted Ms. Curran’s purchase offer. The parties agreed that the sale would complete on April 30, 2021 and that Ms. Curran would take possession of the townhouse at 9 am on May 1, 2021.

### ***Cleaning Requirement***

- 15. Clause 7 of the parties’ contract lists the washing machine, dishwasher, all window coverings and other specific things as “included items” in the purchase price. Clause 8 of the agreement requires that the property, and all included items, be in substantially the same condition at possession (May 1, 2021) as they were on viewing (February 27, 2021). Clauses 7 and 8 are pre-printed in the agreement, but for the inserted dates and the typed list of “included items”.
- 16. Clause 3 of the agreement includes certain conditions, which I find were added by the parties, due to the different font used. In clause 3(3), the seller (Mr. Travas) agreed to have the unit professionally cleaned, including all floors, carpets and appliances, before completion (April 30, 2021).

17. I find the sales contract is inconsistent about whether the property and included appliances would be professionally cleaned before completion (clause 3(3)) or if they only needed to be in the same condition as when viewed (clause 8). As there is more than one reasonable interpretation of the agreement, I may consider other evidence and the circumstances surrounding the making of the agreement in order to determine what the parties intended (see *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53).
18. In this case, I find the contract's format is important. Although clause 8 is a pre-printed clause in the standard form home purchase agreement, clause 3(3) was specifically added to the contract by the parties. Further, clause 8 is broad and covers all "property and included items" while clause 3(3) specifically includes the appliances. So, I find the more specific added clause 3(3) is a better representation of the parties' intentions about required cleanliness of the property and appliances, than the pre-printed standard clause 8.
19. On balance, I find the parties' contract required that the property, and the included appliances be professionally cleaned before the completion date.

### ***House and Appliance Cleaning***

20. Ms. Curran says that the townhouse was dirty when she took possession. She submitted photos that show dirt, hair and debris behind the fridge and stove, thick black grime on the bottom of the kitchen sink drain plugs, and a dirt scuff on the bottom of a wall and baseboard. The photos also show dirt and thick dust on the top of a kitchen shelf and the top of the fridge, dirt in the sliding closet door tracks and thick dust on the baseboards inside the closet.
21. Ms. Curran also describes dirty sliding glass doors and window blinds, greasy kitchen cabinets, dirty bathroom mirrors and floor, and hair in the bathtub drain. Although she did not submit photos of these items, I find Ms. Curran's description is likely accurate, given the obvious dirt in the photos she did submit.

22. Mr. Travas acknowledges he did not hire professional cleaners. He says he and a former professional cleaner could do a better job than the professional cleaners he obtained a quote from. He says he and the former professional cleaner swept, mopped and thoroughly cleaned the house before he moved out. Mr. Travas did not address Ms. Curran's allegations or evidence about the blinds, glass doors, closet tracks and closets, bathroom, or kitchen cabinets.
23. Mr. Travas submitted photos of a recently mopped and still wet hardwood floor, and photos of the whole kitchen, laundry room, and bathroom. None of his photos show obvious dirt. However, I find Mr. Travas' photos do not show the same areas of the house and same degree of detail as Ms. Curran's photos do.
24. On balance, I find Mr. Travas did not have the house professionally cleaned by the completion date, as required by the parties' agreement.
25. Although Mr. Travas says the appliances were clean when he moved out, he does not allege they were professionally cleaned.
26. Ms. Curran's photos show dried up liquid and visible dirt on the fridge door shelves, fridge drawers and freezer drawer. There are food splatters inside the microwave and cooked on black and brown dirt inside the oven. There is dirt and food particles in the dishwasher filter and thick black grime on the inside edge of the dishwasher where the door closes. Finally, the photos show thick gunk on the washing machine filter. Additionally, Ms. Curran says both the dishwasher and washing machine had a musty odour. I find it clear these appliances were not cleaned professionally, as required under the parties' contract.

### ***Remedy***

27. Damages for breaches of contract are intended to put the innocent party in the same position as if the contract had been performed (*Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319). As noted by Mr. Travas, Ms. Curran has not shown that she incurred any actual costs to clean the house and the appliances.

However, I find she is entitled to the value of the professional cleaning she should have received under the parties' contract.

28. Ms. Curran submitted a May 2, 2021 estimate for \$672 at \$224 per hour for 3 hours to clean the 2-bedroom, 1-bathroom townhome in "heavy condition". She also submitted a \$300 plus taxes quote for the same service, both of which included kitchen appliances (except dishwasher), cabinets and blinds.
29. On a judgment basis, I find Ms. Curran is entitled to cleaning cost damages of \$506, which is the approximate average of the 2 cleaning quotes. I find Ms. Curran is also entitled to \$126 for the washing machine cleaning and \$168 for dishwasher cleaning, based on a May 10, 2021 quote from IFIX Appliances Ltd.
30. I find Ms. Curran is not entitled to the further \$126 she claims for washer and dishwasher cleaning, as I find it would result in double recovery. Further, I find the \$126 Ms. Curran paid to IFIX Appliances Ltd. was to diagnose why the washer and dryer shook while in use. I find this expense unrelated to Ms. Curran's claims and therefore is not reimbursable.

### ***Fridge Tray Drawer Cover***

31. Based on Ms. Curran's photo of the inside of the fridge, I find the cover for the deli tray drawer is missing. Although she provides no photos, I accept she found the broken cover elsewhere in the house. Mr. Travas says it was likely that way when he moved into the house.
32. Ms. Curran provided no evidence or submissions about whether the cover was in the fridge when she viewed the townhouse on February 21, 2021. Based on clause 8 of the parties' agreement, the appliances were only required to be in the same condition on possession as when viewed, with the exception of being professionally cleaned, as set out in clause 3(3). As Ms. Curran provided no evidence about the viewing date, I find her claim for the fridge tray drawer cover unproven and I dismiss it.

33. In summary, I find Mr. Travas must pay Ms. Curran \$800 in damages for failing to professionally clean the townhouse and appliances by the completion date.

***Interest, CRT Fees and Dispute-Related Expenses***

34. The *Court Order Interest Act* applies to the CRT. Ms. Curran is entitled to pre-judgment interest on the \$800 damages award from the date of possession (May 1, 2021) to the date of this decision. This equals \$4.19.

35. 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. As Ms. Curran was substantially successful in her dispute, I find she is entitled to reimbursement of the \$125 she paid in CRT fees and \$248.52 in dispute-related expenses to find and serve Mr. Travas with the Dispute Notice.

**ORDERS**

36. Within 14 days of the date of this order, I order Mr. Travas to pay Ms. Curran a total of \$1,177.71, broken down as follows:

- a. \$800 for cleaning costs,
- b. 4.19 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$373.52, for \$125 in CRT fees and \$248.52 for dispute-related expenses.

37. Ms. Curran is entitled to post-judgment interest, as applicable.

38. I dismiss Ms. Curran's remaining claims.

39. 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.



40. 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.

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Sherelle Goodwin, Tribunal Member