



Civil Resolution Tribunal

Date Issued: July 13, 2022

File: SC-2021-008622

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lanctot v. Min*, 2022 BCCRT 800

BETWEEN:

ALLYSSA LANCTOT

APPLICANT

AND:

INGA MIN, MALCOLM JAMES BUCHANAN REITH, and
LISA EILERS BERTRAM

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about the sale of a strata lot in a strata corporation. The applicant, Allyssa Lanctot, was 1 of 2 buyers of the strata lot. The respondents, Inga Min and Malcolm James Buchanan Reith, were the sellers (seller respondents). The respondent, Lisa Eilers Bertram, acted as the seller respondents' realtor.

2. Miss Lanctot says the respondents failed to disclose water leaks from a dryer duct. She says the respondents breached their obligation to disclose this information as it was a material latent defect affecting the strata lot. She seeks payment of \$5,000 as damages. Miss Lanctot says she abandons any amounts over \$5,000 to fit within the Civil Resolution Tribunal's (CRT's) small claims monetary limit.
3. The respondents deny Miss Lanctot's claim. The seller respondents say the dryer duct issue is not a material latent defect. They also say Miss Lanctot has provided no evidence of loss and failed to mitigate her damages. Ms. Bertram says she was unaware of the alleged defect. She submits that in any event, Miss Lanctot has failed to prove any loss.
4. Miss Lanctot and Ms. Bertram are each self-represented. Mr. Reith represents the seller respondents.
5. For the reasons that follow, I dismiss Miss Lanctot's claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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.
7. 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. Some of the evidence in this dispute amounts to a "she said, they 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. 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

10. The issue in this dispute is whether the respondents failed to disclose a material latent defect affecting the dryer duct, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence, including cited case law, but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. I begin with the undisputed background facts. Miss Lanctot purchased strata lot 88 (SL88) from the seller respondents. They signed a contract of purchase and sale dated April 28, 2019. Miss Lanctot and another individual, KMT, were the buyers.

13. The contract included a property disclosure statement (PDS) dated February 9, 2019. In the PDS, Mrs. Min and Mr. Reith indicated that they were unaware of any leakage or unrepaired damage. Miss Lanctot and KMT agreed to waive obtaining an inspection report, as documented in a signed April 28, 2019 addendum. The parties completed the sale on May 28 with possession the next day on May 29, 2019.
14. On December 8, 2019, Miss Lanctot noticed water dripping through a crack in the ceiling where the dryer vent was located. Miss Lanctot advised the seller respondents about the leak on January 27, 2020.
15. There are 3 key reports in evidence. The first is a March 18, 2019 report authored by an engineering firm, Morrison Hershfield Limited (MH). MH wrote about the metal ductwork servicing dryers and bathroom. It said warm moist air cooling within the ductwork appeared to be causing condensation. MH said this could be causing moisture ingress through hairline concrete cracks in certain strata lots and balcony areas. MH listed the strata lots it surveyed. It did not include SL88.
16. In a November 3, 2020 report, the strata's contractor, Elite Metal Works Ltd. (Elite), inspected SL88 for the water leak reported in December 2019. Elite wrote the following. The leak appeared to be directly in line with the in-slab ductwork for the in-suite dryer. Elite found there was unremoved lint in the duct creating a pool of condensed water. Elite concluded that the buildup was caused by faulty maintenance.
17. Finally, another engineering firm, M3 Mechanical Consultants Inc. (M3), wrote a February 9, 2021 report. M3 examined SL88 and found that there was a crack in the living room that was a point of water ingress. M3 found that the area around the crack had been patched and refinished at some point, indicating that the water ingress may have been a problem before Miss Lanctot moved in. M3 found that the source of water ingress was likely water condensation in the dryer duct flowing through the crack. However, it disagreed that poor user maintenance caused the leak. It said the cracking of the concrete slab was the ultimate cause. M3 recommended decommissioning the in-slab dryer exhaust duct and replacing it with a new duct or replacing the ducted dryer with a ventless condensing dryer.

18. In March 2022, Miss Lanctot and KMT sold SL88. There is no evidence about the sale price.

Did the respondents breach an obligation to disclose a latent defect?

19. The principle of “buyer beware” generally applies to real estate transactions in BC. This means that a buyer is required to make reasonable enquiries about the property they wish to purchase. Exceptions to this principle include negligent or fraudulent misrepresentation and the seller’s duty to disclose latent effects. See *Nixon v. MacIver*, 2016 BCCA 8 at paragraphs 32 to 33.

20. Miss Lanctot alleges that the respondents failed to disclose a material latent defect. A seller has an obligation to disclose a material latent defect to prospective buyers if it renders a property dangerous or unfit for habitation. A latent defect is one which cannot be discovered by a buyer through reasonable inspection inquiries. See *Nixon* at paragraph 34.

21. Based on the evidence, including the reports from the contractors and engineers, I find there is no indication that the dryer ductwork or leak issues rendered SL88 dangerous or unfit for habitation. For example, there is no indication that mould or structural damage existed and presented a danger to SL88’s occupants. M3 also suggested that Miss Lanctot could still dry clothes using a ventless dryer to bypass the ductwork entirely. So, I find it unproven that the ductwork or related leak were latent defects.

22. Miss Lanctot says the MH and M3 reports show that the seller respondents knew about the dryer duct and leak issues. As noted earlier, the MH report refers to the ductwork condensation issue in other strata lots. The M3 report refers to evidence of previous repairs done in the area of the leak. However, it is undisputed that prior to the sale, the seller respondents rented out SL88 and did not reside in it. The seller respondents deny ever observing any water ingress, or repairing or painting the living room ceiling. The M3 report did not rule out that the repairs were simply to cover the ceiling crack rather than hide water ingress. Miss Lanctot also first observed water

ingress several months after the sale, rather than immediately after. On balance, I find it unproven that the seller respondents knew of any water leak in SL88 prior to its sale. There is no indication that the realtor, Ms. Bertram, knew about the leak in any event.

23. Further, I find that Miss Lanctot did not explain or provide evidence to support the claimed loss of \$5,000. The reports in evidence do not discuss any repairs that Miss Lanctot had to undertake. There is no indication that she paid any amounts out of pocket for repairs. There is also no indication that the dryer ductwork issues negatively affected SL88's sale price when Miss Lanctot resold it in March 2022.
24. I note that Miss Lanctot did not specifically rely on the law of misrepresentation. Even if she had, I would find her damages unproven in any event.
25. Given the multiple issues outlined above, I dismiss Miss Lanctot's claims.
26. 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. I see no reason in this case not to follow that general rule. I dismiss Miss Lanctot's claims for reimbursement. The parties did not claim for any specific dispute-related expenses.

ORDER

27. I dismiss Miss Lanctot's claims and this dispute.

David Jiang, Tribunal Member