



# Civil Resolution Tribunal

Date Issued: October 5, 2022

File: SC-2022-000635

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *De Marre v. Snijders*, 2022 BCCRT 1095

**B E T W E E N :**

EVA-RENEE DE MARRE

**APPLICANT**

**A N D :**

MARCELLA SNIJDERS and JUSTEN LALONDE PERSONAL REAL  
ESTATE CORPORATION

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about a residential home sale.

2. The applicant, Eva-Renee De Marre, purchased an apartment from the respondent, Marcella Snijders. Ms. De Marre says Ms. Snijders failed to ensure the fireplace was in good working order as required under their contract of purchase and sale. Ms. De Marre claims \$154.41 for a fireplace inspection. She also says the fireplace cannot be repaired and must be replaced, at a cost of over \$5,000. Ms. De Marre reduced her claim to \$5,000, the small claims monetary limit in the Civil Resolution Tribunal (CRT).
3. Ms. Snijders disagrees with the claim. She says any fireplace obligation was not communicated to her, and she does not recall signing the contract addendum that included the condition about the fireplace. She also says the obligation to ensure the fireplace was in “good working order” does not mean she had to replace the fireplace. Lastly, she says Ms. De Marre prevented her from repairing the fireplace.
4. The other respondent is Justen Lalonde Personal Real Estate Corporation (JLPREC), Ms. Snijders’ real estate agent. JLPREC generally supports Ms. Snijders’ position, and also says that it was not a party to the home sale contract.
5. Ms. De Marre and Ms. Snijders each represent themselves. JLPREC is represented by its principal, Justen Lalonde.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT’s formal written reasons. 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. 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.

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.

## **ISSUES**

10. The issues in this dispute are:

- a. Was the contract amendment about the fireplace binding on Ms. Snijders?
- b. If so, was the fireplace in good working order as required?
- c. Is either respondent responsible for the fireplace inspection and fireplace replacement costs?

## **EVIDENCE AND ANALYSIS**

11. As the applicant in this civil proceeding, Ms. De Marre must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

12. The parties' October 22, 2020 contract of purchase and sale (contract) says that November 6, 2020 was the completion and possession date. The purchase was subject to Ms. De Marre's obtaining and approving a property inspection report.
13. As a result of the findings in the inspection report, which I return to below, Ms. De Marre sought and obtained a contract amendment. The October 30, 2020 amendment contained 2 clauses.
14. The first clause said that Ms. Snijders will ensure, at her expense, that the hot water tank was replaced within 30 days of completion. It is undisputed that Ms. Snijders replaced the water tank as required.
15. The second clause said that Ms. Snijders will ensure, at her expense, that the gas fireplace "will be in good working order" within 60 days of completion.
16. I pause to address JPREC's liability. JLPREC was Ms. Snijders' agent. As such, I find JLPREC owed no professional duty of care to Ms. De Marre. Ms. De Marre does not argue otherwise and says she named JLPREC as a respondent because she did not have contact information for Ms. Snijders. She says she agrees with continuing the claim solely against Ms. Snijders. So, I dismiss the claim against JLPREC. When I use the term "parties" below, I mean the contracting parties, Ms. De Marre and Ms. Snijders.

***Was the contract amendment about the fireplace binding on Ms. Snijders?***

17. Ms. Snijders says she does not remember signing "any agreement" nor seeing "it" in writing. I infer that she means the contract amendment and not the contract itself. The amendment bears the digital signature of both parties, matching the signatures in the parent contract. Ms. Snijders does not argue that the digital signatures are not hers. I find Ms. Snijders' inability to remember signing this particular document during what was likely a busy time in her life is not determinative of whether she signed it. The fact that she replaced the hot water tank, and attempted to address the fireplace, both suggest she did so based on an awareness of a contractual obligation. On balance, I find Ms. Snijders signed the amendment.

18. In general, when a person signs a contract they are bound by it even if they may not have read or understood the contract. There are exceptions, such as fraud, misrepresentation, or mistake, but Ms. Snijders must show an exception applies. I find she has not done so here. The amendment was short and straightforward.
19. Ms. Snijders says neither JLPREC nor her lawyer communicated to her the obligation to ensure the fireplace was in good working order. She says she has been let down by the expensive professionals she employed to protect her interests. I find that is a matter between Ms. Snijders and the professionals she engaged. I note that Ms. Snijders did not make a third-party claim against JLPREC in this dispute.
20. The steps Ms. Snijders took after the amendment date also indicate she was aware of the obligation. She arranged with Ms. De Marre to enter the apartment and attempt to get the fireplace working. I return to this below.
21. I find the amendment was binding on the parties and Ms. Snijders was required to ensure the gas fireplace was in good working order by January 6, 2021.

***Was the fireplace in good working order as required?***

22. The October 27, 2020 inspection report said the gas fireplace unit was aging, and at the time of review did not function consistently. It said a technician should “investigate and rectify or replace” the fireplace.
23. In late October, Mr. Lalonde reached out to confirm with Ms. Snijders that the fireplace was functioning. She said it was inspected, cleaned and serviced in September. In a November 4, 2020 email she said she had been heating the apartment with the fireplace over the last few days. Mr. Lalonde relayed that information to Ms. De Marre’s agent.
24. However, Ms. De Marre says when she took possession, the fireplace did not work. Ms. Snijders insisted that she could show Ms. De Marre how to use the fireplace, or fix it if necessary. On November 28, 2020, Ms. Snijders attended the unit with Ms. De Marre present. Ms. De Marre says Ms. Snijders spent an hour tinkering but was

unable to keep the fireplace lit. Ms. Snijders says the pilot light kept blowing out because it was a windy day. I find nothing turns on this given the parties agreed to have a professional inspect the fireplace.

25. In consultation with Ms. De Marre, Ms. Snijders asked Gaslight Heat Services (Gaslight) to attend. According to Gaslight's January 29, 2021 invoice, its technician could not get the 25-year-old fireplace running as the switch needed to be replaced. The switch was a mercury switch that had been discontinued. Ms. Snijders does not dispute these findings. She adds that Gaslight told her that mercury ignition switches are now illegal and the manufacturer of the fireplace is out of business.
26. Although the Gaslight invoice does not identify the technician by name, I accept the technician's observations as expert opinion evidence on the fireplace's function under the CRT's rules, noting the technician's qualifications were not disputed. Based on Gaslight's invoice, as well as the home inspection report, I find the fireplace was not in good working order as required by the parties' contract.
27. I also accept that the Gaslight's opinion that the fireplace could not be repaired, and had to be replaced. Ms. Snijders says that Gaslight is biased toward selling new fireplaces. However, it was open to Ms. Snijders at the time to obtain another opinion about whether the fireplace could be repaired, particularly given Ms. De Marre provided access to the apartment. I find the allegation of bias toward replacement unproven.

***Is Ms. Snijders responsible for the fireplace inspection cost?***

28. As noted above, Ms. De Marre claims \$154.41 for Gaslight's inspection and interest Gaslight charged. Ms. Snijders does not dispute that she agreed to pay for the inspection. Due to communication breakdowns, the details of which are not important, Ms. De Marre ended up paying the invoice and interest. Ms. Snijders accepted responsibility for the invoice and interest, and sent Ms. De Marre a cheque for \$154.41, but Ms. De Marre did not deposit it because she had already filed her claim. I find the cheque is now likely "stale dated". This means Ms. De Marre's financial

institution may not honour it. Therefore, I order Ms. Snijders to pay Ms. De Marre \$154.41 for the inspection and interest.

***Is Ms. Snijders responsible for the fireplace replacement cost?***

29. Ms. Snijders says Ms. De Marre's lack of communication and cooperation prevented her from getting the fireplace in good working order or "installing a reconditioned one". However, I find Ms. Snijders did not attempt to address the fireplace after Gaslight indicated it needed to be replaced. Overall, I find Ms. De Marre did not prevent Ms. Snijders from replacing the fireplace on her own.
30. Ms. Snijders says she spent \$25,000 fixing up the apartment, and that she could have easily sold it with no conditions. I find these assertions, even if Ms. Snijders had supported them with evidence, are not relevant to the interpretation of the parties' contract and the fireplace obligation. Ms. Snijders was required to ensure the fireplace was in good working order by January 6, 2021, and she did not do so.
31. Damages for breach of contract are meant to put the innocent person in the same position they would be in if the contract had been performed. The Gaslight estimate for a replacement fireplace came to \$5,090.40. This figure did not include a \$1,000-\$1,600 charge for a boom lift to install venting, mentioned separately on the invoice. Ms. Snijders acknowledged that Gaslight told her new regulations required this venting and it would cost \$1,000. In the absence of specific evidence about how much the lift will cost, I accept \$1,000 as the lift charge. Adding GST, in total I find it will cost \$6,140.40 to replace the fireplace
32. Ms. Snijders indirectly raises the issue of betterment. Betterment arises when ordering the full cost of replacing an item would provide a person with an item of greater value than what existed before the breach. I find a new gas fireplace would put Ms. De Marre in a better position than if the fireplace had been working on the possession date. This would be unfair to Ms. Snijders. While the cost of repair or replacement is the starting point, I must consider pre-loss depreciation or post-loss

betterment, depending on what is reasonable in the circumstances (see *Laichkwiltach Enterprises Ltd. v. F/V Pacific Faith (Ship)*, 2009 BCCA 157 at paragraphs 38-40).

33. As noted, the fireplace was over 25 years old and at the end of its useful life. The replacement fireplace can be expected to last many years. In *411397 B.C. Ltd. v. Granmour Holdings Ltd.*, 1996 CanLII 3531 (BC SC), a case involving a bar and cooler, the court applied a 75% deduction for betterment. In *Rowe v. Walker*, 2018 BCPC 251, a case involving a damaged fence that was in poor repair and needed replacing within 2 years, the court applied an 80% deduction. In *MacCallum v. Carr*, 2020 BCCRT 554, a case involving a washing machine that did not work after a home purchase, the CRT applied an 80% deduction. In line with these decisions, I conclude that the appropriate deduction for betterment is 80% of the value claimed. The result is that I order Ms. Snijders to pay Ms. De Marre \$1,228 in damages.
34. The *Court Order Interest Act* applies to the CRT. Ms. De Marre is entitled to pre-judgment interest on the \$154.41 debt from January 7, 2022, the date she paid the invoice, to the date of this decision. This equals \$1.02. There is no evidence that Ms. De Marre has replaced the fireplace yet, so I do not order any interest on the breach of contract damages.
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. I find Ms. De Marre was substantially successful, and therefore is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

36. Within 14 days of the date of this order, I order Ms. Snijders to pay Ms. De Marre a total of \$1,558.43, broken down as follows:
  - a. \$154.41 in debt,
  - b. \$1,228.00 in damages,



- c. \$1.02 in pre-judgment interest under the *Court Order Interest Act*, and
- d. \$175.00 in CRT fees.

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

38. 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. 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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Micah Carmody, Tribunal Member