



Civil Resolution Tribunal

Date Issued: November 25, 2022

File: SC-2022-000658

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Amin v. Seib*, 2022 BCCRT 1272

BETWEEN:

SEYED MAJID HOSSEINI AMIN and DARYANAZ DARGAHI

APPLICANTS

AND:

GARY SEIB and JOANNE SEIB

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a residential home sale. The applicant buyers, Seyed Majid Hosseini Amin and Daryanaz Dargahi, say the respondent sellers, Gary Seib and Joanne Seib, provided a non-functional cooktop, contrary to the contract of purchase and sale (CPS). The applicants claim \$2,360.68 to replace the broken cooktop.

2. The respondents say the cooktop was working as of the December 21, 2021 possession date, so they did not breach the CPS. They also say the cooktop was 12 years old and had already surpassed its reasonable end of life, so they should not have to compensate the applicants for a new stove.
3. The applicants are self-represented. While Mr. Seib is a lawyer, both respondents are represented by a non-lawyer family member.

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.

8. In the applicants' final reply submissions, they provided a link to a YouTube video and submissions about the video's content. As the video link was new evidence provided past the deadline, the respondents were provided with an opportunity to review and provide submissions in response to the video and the applicants' final reply, which they did. Therefore, I find the respondents would not be procedurally prejudiced if the late video evidence was admitted.
9. I note that the CRT does not typically accept links to websites because website content can change, so the CRT member generally cannot know whether they are viewing the same content that the parties viewed. However, according to the YouTube page, the referenced video was uploaded on December 3, 2021, before this dispute started. Further, I am satisfied from the parties' submissions that they are both referring to the same video that I have viewed on YouTube. I also find the video is relevant to this dispute. So, bearing in mind the CRT's flexible mandate, I have admitted the YouTube video as evidence and have considered it in my analysis below.

ISSUE

10. The issue in this dispute is whether the respondents breached the parties' CPS by providing a non-functioning cooktop, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
12. The parties' December 6, 2021 CPS included the following relevant terms and conditions:

13. The sellers (Mr. and Ms. Seib) warrant that the appliances included in the purchase of this property will be in “proper working order” as of the December 21, 2021 possession date.
 - a. The property and all included items will be in substantially the same condition at the possession date as when viewed by the buyers (Drs. Amin and Dargahi) on December 5, 2021.
 - b. “Included items” in the purchase price included “all appliances”, among several other things.
14. The applicants say that when they took possession of the property on December 21, 2021, they discovered a large crack in the glass ceramic cooktop surface that caused the largest burner to not turn on. I find that the cooktop was an appliance and an “included item” under the CPS.
15. The applicants provided a December 22, 2021 video they took showing that 3 of the 4 cooktop burners glowed red under the glass when turned on. It also shows what appears to be a crack in the cooktop across the largest burner element, which visibly did not glow red when turned on, and was not hot when touched. Based on this video, I accept that the largest burner was not working.
16. The applicants say they immediately contacted their real estate agent, ZR, who in turn notified the respondents’ agent. The applicants provided a signed letter from ZR, who stated they did not see the cooktop crack when they first viewed the property, but they noticed it and the broken burner upon taking possession. ZR stated that the respondents’ agent initially agreed the cooktop should be fixed given the warranty in the CPS that all appliances would work, but that the sellers ultimately rejected the repair request. The applicants say that because the respondents refused to repair the cooktop, they had no choice but to replace it at their own expense.
17. The respondents submit that the applicants likely broke the cooktop themselves by dropping something on it while moving in. I do not accept that speculative submission. Dr. Dargahi submits that she saw the crack when she first viewed the property on

December 5, 2021, though she says she did not turn on the burners to confirm whether they were all working.

18. I find Dr. Dargahi's submission about the pre-existing crack is supported by the December 3, 2021 YouTube video. The video appears to be an advertisement for the property's sale, showing the property's interior, including the kitchen. I find the same crack over the largest burner is visible in both the video and the applicants' photographic and video evidence from after the possession date. Based on this evidence, I find the crack in the cooktop's surface was present before the applicants first viewed the property.
19. The respondents also argue that even if the crack was pre-existing, the applicants have not proven the crack was the cause of the burner not working. I disagree. In an email to Dr. Amin, the cooktop's manufacturer advised that given the photo of the crack and the non-functioning burner, the cooktop glass needed replacement. I find the manufacturer has the required expertise to comment on the cause of the non-functioning burner. So, I find it is more likely than not that the crack in the cooktop's surface caused the burner not to work. As I have found the crack was present before the applicants took possession of the property, I find the burner was likely not functioning on the possession date.
20. This brings me to whether the cooktop's condition complied with the CPS' terms and conditions. As noted, the CPS required all included items to be in the same condition on the December 21, 2021 possession date as when viewed on December 5, 2021, and all appliances to be in "proper working order". As I have found the cooktop was likely not working when the applicants viewed it on December 5, there appears to be a conflict in the CPS terms: was the cooktop required to be in same non-functioning condition as it was when viewed on December 5, or was it required to be in proper working order?
21. The condition that all "included items" must be in substantially the same condition as when viewed, was a standard, pre-printed condition on the CPS. I find the purpose of that condition was to ensure the included items were not in a worse condition on the

possession date than when the buyers previously viewed them. In contrast, the parties specifically added the sellers' warranty that all appliances would be in proper working order. I find this specific warranty superseded the standard condition about included items being in the same condition as when viewed. In other words, I find the specific warranty meant that regardless of the appliances' condition when the buyers viewed them, the sellers warranted that they would be in good working order on the possession date.

22. Given all the above, I find the respondents breached their CPS warranty that the cooktop would be in proper working order on the December 21, 2021 possession date.
23. So, what is the appropriate remedy?
24. As noted, the applicants claim \$2,360.68, but they did not explain how they arrived at that amount. The applicants say the cooktop's manufacturer verbally advised them to completely replace the cooktop, which they undisputedly did. However, they did not provide the invoice or any other supporting evidence of that cost.
25. In any event, I find that awarding the cost of a brand-new appliance would amount to betterment for the applicants, meaning it would put them in a better position than they would have been in had the cooktop been working on the possession date. I note that the respondents provided evidence the cooktop was 12 years old, which the applicants do not dispute. Overall, I find the most appropriate measure of the applicants' damages is what it would have cost them to repair the broken cooktop, as that is what the respondents would have had to pay to provide a properly working cooktop on the possession date.
26. The respondents say the applicants could have repaired the cooktop by replacing the non-functioning burner. I disagree, based on the manufacturer's email referenced above stating that the cooktop glass needed replacement. The manufacturer's email also stated the cost to replace the glass was \$1,264.99, plus a flat \$269 service fee,

plus tax. So, I find the applicants likely could have repaired the cooktop for \$1,610.69. I order the respondents to pay the applicants that amount.

27. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$1,610.69, from February 28, 2022 the date the Dispute Notice was issued, which is a date I find is reasonable under the circumstances, to the date of this decision. This equals \$13.55.
28. 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 the applicants were largely successful, and so they are entitled to reimbursement of \$125 in paid CRT fees. No parties claimed any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this decision, I order the respondents to pay the applicants a total of \$1,749.24, broken down as follows:
 - a. \$1,610.69 in damages for the cooktop's repair,
 - b. \$13.55 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
30. The applicants are entitled to post-judgment interest, as applicable.
31. 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.

Kristin Gardner, Tribunal Member