Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Henriksen v. Miller*, 2022 BCCRT 1275

B E T W E E N :

GARY HENRIKSEN

APPLICANT

A N D :

DEREK GEORGE MILLER and ADELLE MILLER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. The applicant, Gary Henriksen, purchased a house from the respondents, Derek George Miller and Adelle Miller. The applicant says that the respondents failed to disclose issues with the house's furnace, plumbing and septic system. He says the furnace, plumbing and septic system should have been in good working order. The applicant claims $1,885.64 in damages for the following:

a. $525 for emptying the septic tank,

b. $28 for renting a sewer snake to unclog a pipe,

c. $832.64 for furnace repairs, and

d. $500 for removing laminate floors to prevent damage after water allegedly overflowed into the house's basement.

2. The respondents say they never had issues with the septic system or plumbing. While they admit the furnace was 40 years old, the respondents say that it, the septic system, and plumbing system were all in working order at possession. The respondents deny they owe the applicant anything.

3. The parties are each self-represented in this dispute.

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. At my request, CRT staff asked the parties to provide submissions on whether the furnace and septic tank are "appliances" under clause 3 of the parties' contract as the parties had not addressed this in their initial submissions. The respondents provided their submissions on this issue after the CRT's deadline for doing so. The applicant reviewed and replied to the respondents' late submissions. So, I find the applicant was not prejudiced by the respondents' late submissions and I have considered them in my analysis below.

ISSUES

9. The issues in this dispute are:
    a. Did the respondents fail to disclose problems with the furnace or septic and plumbing systems?
    b. Did the respondents breach any contractual warranties?
    c. If yes to either of the above, what remedy is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

11. The following facts are undisputed. The applicant viewed the property on June 20, 2021 but did not obtain a professional home inspection. On June 21, 2021, the parties

entered into a contract for the property's sale. The sale had a completion date of August 24, 2021 and possession date of August 25, 2021.

12. The applicant says that a few days after moving in on the possession date, he went to turn on the heat using the Nest thermostat and it said the furnace was not working. He says he then called a furnace contractor who told him that the relay on the gas valve was broken. As noted, the respondents say the furnace was working on the possession date.

13. The applicant further says that around September 9, 2021, water started overflowing into the basement through the ceiling when his wife tried to drain bathwater in the upstairs tub. The applicant says this happened because a pipe connecting the house to the septic tank was clogged and because the septic tank was full. The applicant further says he had the septic tank emptied and found that it was full of wipes. The applicant says the pipe was also clogged with wipes. The respondents deny flushing wipes and say the applicant must have done so and caused the alleged issues.

Did the respondents fail to disclose problems with the furnace or septic and plumbing systems?

14. The applicant says that the respondents stated in the June 18, 2021 property disclosure statement (PDS) that the furnace, septic system and plumbing system were in good condition.

15. The applicant also says that the respondents confirmed in a text message that the septic system and plumbing were in good order and that the septic tank had been emptied 2 years ago.

16. As mentioned, the respondents say that everything was in working order at the time of possession. In the PDS, the respondents said they were not aware of any problems with the heating or central air conditioning system, the sanitary sewer system, or the plumbing system. The respondents say that everything in the PDS is true. They further say that since the applicant bought the house without first doing a home inspection, he bought it "as is".

17. The evidence includes a June 20, 2021 text message exchange that appears to be between the applicant and his real estate agent. I infer one of these messages included answers provided by the respondents to the applicant's questions. This message said where the septic tank was located and that it had been emptied 2 years ago. I do not find this message includes any representations or warranties, other than the septic tank was emptied 2 years ago. The applicant says that based on his conversations with 2 septic tank companies, and how full the tank was, there is no way the respondents had the tank emptied 2 years ago. I do not accept this hearsay evidence. The applicant failed to provide any statements from the septic tank company representatives he says he spoke to. So, I find it unproven that the respondents misrepresented when they last emptied the septic tank.

18. I will now consider whether there were problems with the furnace, septic system, and plumbing system, known to the respondents that they failed to disclose. The principle of "buyer beware" generally applies to home sales. A buyer is required to make reasonable pre-purchase enquiries about the property. Exceptions include the seller's duty to disclose known latent defects (see *Nixon v. MacIver*, 2016 BCCA 8).

19. A latent defect is one that a buyer cannot discover through reasonable inspection and includes defects which make the property unfit or dangerous for living. A patent defect is one that can be discovered through inquiry or reasonable inspection. A seller does not have to disclose patent defects to a buyer but cannot actively conceal them (see *Cardwell v. Perthen*, 2007 BCCA 313).

20. Further, a PDS asks whether a seller is aware of a defect, and this awareness is inherently subjective (see *Hamilton v. Callaway*, 2016 BCCA 189). In a PDS, a seller must disclose honestly their actual knowledge of the property, but that knowledge does not have to be correct (see *Nixon*). A statement in a PDS does not rise to the level of a warranty (see *Hanslo v. Barry*, 2011 BCSC 1624).

21. The evidence includes a September 2, 2021 invoice for $136.49 from CE Plumbing and Heating (CE). The applicant says he paid this amount for a service call for the broken furnace. The evidence also includes a September 2, 2021 $696.15 quote from

CE to change out the furnace's gas valve. Based on these documents and the applicant's evidence that he did not try to turn on the furnace until a few days after he moved in, I find it likely that the furnace's gas valve was broken at the time the applicant moved into the house.

22. The evidence also includes a September 9, 2021 $525 invoice from Action Septic Pumping for pumping the septic tank. The invoice notes "flushable wipes present". I find this invoice proves that the applicant paid $525 to empty the septic tank and that there were wipes present in the tank. However, I find the evidence before me does not establish that the "flushable wipes" found in the septic tank should not have been flushed or that the septic tank was so full that it malfunctioned. I cannot conclude from the evidence before me that the septic tank was not in good working order, and I find this is not within ordinary knowledge. I find this issue requires expert evidence to prove (see *Bergen v. Guliker*, 2015 BCCA 283) and there is none before me. So, I find it unproven that the septic tank had any problems that the respondents knew about and failed to disclose.

23. The applicant also says that he spent $28 to rent a sewer auger to unclog the pipe between the septic tank and the house. The evidence includes a September 9, 2021 rental invoice for this amount. Based on this invoice and the applicant's submissions, I accept that there was a clog in the pipe. However, other than the applicant's assertions, there is no evidence before me about the clog's cause or that the pipe was clogged before the applicant moved in. Though the applicant says the respondents caused the clog by flushing wipes, I find this unproven based on the evidence before me. So, I find the applicant has failed to prove that there were problems with the septic system, which I find includes the septic tank and the pipe, that the respondents failed to disclose.

24. Lastly, the applicant alleges there were issues with the house's plumbing system related to the clogged pipe and unproven septic tank issues which caused water to overflow in the basement. The applicant provided some photographs which show flooring that had been taken out. However, I do not find these photographs show

water damage or flooding. Even if they did, other than his own assertions, the applicant provided no evidence of any issues with the plumbing system or what caused those alleged issues. So, I find the applicant has failed to prove that there were issues with the house's plumbing system.

25. To summarize, I find the applicant has proven that the furnace's gas valve was broken. Was this issue a latent defect? The applicant's evidence is that he discovered the furnace was not working when he tried to turn it on. So, I find the issue with the furnace likely could have been discovered through reasonable inspection and was not a latent defect.

26. Further, I find the evidence before me fails to establish that the respondents had any knowledge that the furnace's gas valve was broken. Since the house sold in the summer, I find it likely that the respondents would not have discovered the broken gas valve before the sale completed. So, I find the applicant has not proven that the respondents improperly filled out the PDS or otherwise failed to disclose their actual knowledge about the furnace. In short, I find the applicant has not proved any misrepresentation.

Did the respondents breach any contractual warranties?

27. Under clause 3 of the parties' contract, the respondents warranted that the appliances included in the sale would be "in proper working order" as of the possession date.

28. In his further submissions, the applicant says the furnace is an appliance which should have been in proper working order on the possession date. The respondents disagree.

29. Various CRT decisions have considered the word "appliance" in contractual terms like clause 3 here. Generally, the CRT has found that the word appliance is broadly defined and can include a gas fireplace, hot water tank, and furnace (see *Bogdanova v. Pour*, 2020 BCCRT 421 at paragraph 36, *Greenwood v. Wu*, 2022 BCCRT 49 at paragraph 14 and *Kwieton v. Lindberg*, 2021 BCCRT 78 at paragraph 37). Though not binding on me, I find the reasoning in these decisions persuasive.

30. The *Merriam-Webster.com Dictionary* also says that an appliance includes an instrument or device designed for a particular use or function, specifically a household or office device (such as a stove, fan, or refrigerator) operated by gas or electric current. Based on this definition and the CRT decisions cited above, I find the furnace here is an appliance. So, I find the respondents warranted the furnace would be in proper working order on possession.

31. I have found above that the furnace's gas valve was broken and needed to be replaced when the applicant moved into the house. So, I find it more likely than not that the furnace was not in proper working order on the possession date.

32. Though the applicant says instead of repairing the old furnace he decided to replace it, he seeks damages only for the amount he spent for the service call on September 2, 2021 and what it would have cost to replace the gas valve. Based on CE's September 2, 2021 invoice and quote for replacing the gas valve, I find the applicant is entitled to $832.64 in damages for the respondents' warranty breach. I dismiss the applicant's remaining claims.

33. The *Court Order Interest Act* applies to the CRT. However, the applicant expressly waives any claim for pre-judgment interest, so I make no order for interest.

34. 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. Since the applicant was partially successful, I find he is entitled to reimbursement of half his paid CRT fees. This equals $62.50. The parties do not claim any dispute-related expenses.

ORDERS

35. Within 21 days of the date of this decision, I order the respondents to pay the applicant a total of $895.14 broken down as follows:
    a. $832.64 in damages, and

b. $62.50 for CRT fees.

36. The applicant is entitled to post-judgment interest, as applicable.

37. I dismiss the applicant's remaining claims.

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.

Nav Shukla, Tribunal Member