



# Civil Resolution Tribunal

Date Issued: December 6, 2022

File: SC-2022-003256

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pruss v. Viana*, 2022 BCCRT 1308

BETWEEN:

DUSTIN PRUSS

**APPLICANT**

AND:

FRANCISCO LUCIO VIANA and FRANCISCO LIMA VIANA

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant Dustin Pruss bought a condominium (condo) from the respondents, Francisco Lucio Viana and Francisco Lima Viana. Because the respondents share

the same first and last name, without intending any disrespect I will refer to them as Lucio and Lima for clarity. Mr. Pruss says the condo's washing machine (washer) leaked water on the first use after he took possession of the condo on May 1, 2022. Mr. Pruss claims \$469.48 for repair costs. Mr. Pruss is self-represented.

2. Lucio says the washer was in working order on the possession date. Lucio also says Mr. Pruss fixed the washer without notifying the Vianas, when Lucio says they could have had it repaired under warranty. Lucio further says the claim is invalid because Mr. Pruss did not notify him of the issue on the possession date. As discussed below, Lima is in default because they did not file a Dispute Response as required when served. Lucio is self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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). CRTA section 2 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.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.
5. CRTA section 42 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.

6. 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.
7. Lucio submitted evidence past the CRT's deadline. Mr. Pruss had the opportunity to review and comment on it. Bearing in mind the CRT's flexible mandate, I allow the late evidence and have considered it in my analysis below.

## **ISSUE**

8. The issue in this dispute is whether the Vianas provided a non-functioning washing machine, and if so, whether Mr. Pruss is entitled to \$469.48 in repair costs.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant Mr. Pruss must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. The parties' contract of purchase and sale (CPS) included the following relevant terms:
  - a. The sellers (Lucio and Lima) warrant that the appliances included in the purchase will be in "good and proper working order" as of the May 1, 2022 possession date.
  - b. The property and all included items will be in substantially the same condition on the possession date as when viewed by the buyer (Mr. Pruss) on January 30, 2022.
  - c. "Included items" in the purchase price included "all appliances" (such as the washer), among several other things.

11. 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 good and proper working order. I find this specific warranty replaced or took priority over 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 May 1 possession date. I note Lucio does not argue otherwise.
12. I turn then to the timing of the leak’s discovery and whether Mr. Pruss has proved the washer was not in good working order on May 1. I pause to note that it is undisputed, and I find, that a leaking washer is not in “good and proper working order.”
13. Mr. Pruss undisputedly first used the washer on May 3, 2022 and it leaked. Emails between the parties’ realtors on May 4 show that Mr. Pruss had reported the leak to his own realtor by the early morning of May 4 if not on May 3 when he says he first tried using the washer. Videos in evidence show the washer leaking. A photo shows the machine’s door seal is torn in several places.
14. Lucio says the washer was in good working order on the possession date. The respondents had rented the condo to a tenant, KF, before they sold it to Mr. Pruss. Lucio submitted a screenshot of a May 6, 2022 text exchange he had with KF who wrote that the washer never leaked. The difficulty here is that Lucio and KF do not say when KF moved out or last used the machine. Further, even though KF may not have been aware of a leak, that does not mean the washer was not leaking. The videos show the water was primarily dripping from underneath the washer.
15. In any event, Mr. Pruss undisputedly found the washer leaking on his first use of it on May 3, 2022. He then discovered the machine’s door seal was torn in several places,

as shown in a photo in evidence. Given this timing, I find it likely the washer was not in good working order 2 days earlier on May 1 when it was not in use in the interim.

16. In short, I find it likely the washer was not in good working order on the May 1 possession date, contrary to the Vianas' obligation under the CPS. The machine was undisputedly leaking water because its door seal was torn. Given the photo and videos in evidence, I find it unlikely that Mr. Pruss somehow tore the door seal in several places the first time he used the machine. I note Lucio does not expressly argue that he did.
17. Next, I do not agree with Lucio that Mr. Pruss breached the contract because he did not report the leaking washer to the Vianas on the May 1, 2022 possession date. What matters is whether Mr. Pruss has proved the washer was not in good working order on May 1. In any event, I accept Mr. Pruss' undisputed evidence that he had no way to contact the Vianas directly. I find his approach of contacting his realtor to report the leaking appliance was reasonable.
18. Next, contrary to Lucio's unsupported submission that the washer could have been fixed under warranty, the Vianas' realtor had emailed that the warranty expired on the possession date. It is also undisputed the Vianas did not leave any warranty documentation in the condo as the CPS required.
19. Further, while the sales receipt Lucio provided refers to a manufacturer warranty, there is nothing on this receipt to show Lucio bought an extended service warranty or what its terms might be. Also, nothing turns on the fact that Lucio had bought the washer in July 2019, given that was almost 3 years before Mr. Pruss discovered the leak. I find it unproven there was any available warranty coverage for Mr. Pruss. In the circumstances described above, I find Mr. Pruss reasonably pursued a repair on May 6, 2022.
20. Given my conclusions above, I find Mr. Pruss is entitled to reimbursement of the claimed \$469.48, an amount I find reasonable and is supported by an invoice for the door seal's replacement.

21. I turn then to Lima's default status, due to their failure to file a Dispute Response as required. Generally, when a party is in default, liability is assumed. Here, I do not need to assume liability. I find the evidence before me proves that both Lucio and Lima were the sellers under the CPS and so both are jointly and severally responsible under the CPS for the repair costs.
22. The *Court Order Interest Act* (COIA) applies to the CRT. However, because Mr. Pruss expressly waives any claim for pre-judgment interest, I make no order for interest.
23. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Pruss was successful I allow his claim for reimbursement of \$125 in CRT fees. Mr. Pruss does not claim any dispute-related expenses.

## **ORDERS**

24. Within 21 days of this decision, I order Lucio and Lima, jointly and severally, to pay Mr. Pruss a total of \$594.48, broken down as follows:
  - a. \$469.48 in damages, and
  - b. \$125 in CRT fees.
25. Mr. Pruss is entitled to post-judgment interest, as applicable.
26. 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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Shelley Lopez, Vice Chair