Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Tetreault v. Murphy*, 2024 BCCRT 413

B E T W E E N :

CAROLE TETREAULT

APPLICANT

A N D :

MARCUS JOHN MURPHY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about leaks and pests a buyer discovered after purchasing a house.

2. The applicant, Carole Tetreault, bought a house from the respondent, Marcus John Murphy. The applicant says the first night she stayed in the house she heard an

unusual noise. After investigation, she discovered there was a water leak under the house. Later that year, she also discovered ant infestations. She says the respondent did not disclose either problem when completing the sale but that there is no way the respondent could have been unaware of them.

3. The applicant claims $4,042.40, which includes $3,523.49 for the cost of repairing the water leak and $518.91 for pest control.

4. The respondent says they completed the property disclosure statement (PDS) honestly and to the best of their knowledge. They say they did not know about either problem. They say the applicant did not arrange for a property inspection, despite having an opportunity to do so. They depend on the principle of "buyer beware" and ask me to dismiss the applicant's claim.

5. The parties are each self-represented.

6. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

7. These are the Civil Resolution Tribunal (CRT)'s formal written reasons. The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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. Since the claim's total value is under $5,000, and bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice.

9. 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 court.

10. Where permitted by CRTA section 118, 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

11. The issue in this dispute is whether the respondent misrepresented the house's condition, if so, whether they must pay the applicant damages for her plumbing and pest control costs.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

"Buyer Beware" and the Law of Defects

13. As noted above, this dispute is about two issues – a water leak and an ant infestation - that a buyer discovered after completing the purchase of a home. Both issues engage the same legal analysis about a buyer's a risk and a seller's obligation.

14. The general rule in the sale of real property is *caveat emptor*, which means "buyer beware". This means that buyers must make reasonable inquiries about, and conduct a reasonable inspection of, the property they wish to purchase. Sellers have no obligation to actively inform themselves about the state of the property they are selling, including whether any defects exist.

15. However, there are some exceptions to "buyer beware." These exceptions largely depend on the distinction between patent defects and latent defects and whether the

seller has either negligently or fraudulently misrepresented the existence of such defects to a buyer.

16. Patent defects are those that a person can discover by conducting a reasonable inspection or inquiry about the property. A seller does not have to disclose patent defects to a buyer, but they must not actively conceal them.[1]

17. A latent defect is one that a person cannot discover by observation or reasonable inspection. A seller must disclose any material latent defect if they know about it. A latent defect is material if it renders the house dangerous or uninhabitable.[2] Sellers will be considered to have knowledge of a material latent defect if they are actually aware of the defect, or where they are reckless as to whether the defect exists. It is the applicant who must prove the respondent either knew about the issue or acted recklessly. [3]

Contract and Property Disclosure Statement

18. On November 20, 2021, the same day the buyer viewed the property, the parties signed a standard-form contract of purchase and sale for a home and property. The contract has a term incorporating the seller's property disclosure statement (PDS). In the PDS, the respondent confirms they are not aware of any problems with the water system, plumbing system, unrepaired damage from insects, or any other latent defects.

19. Since it was specifically incorporated into the contract, the PDS is another exception to the "buyer beware" principle. Sellers must correctly and honestly disclose their actual knowledge of the property when completing a PDS.[4] However, this obligation is based on the sellers' subjective knowledge. This means that if a seller does not know about a problem, they are not liable for failing to list it in the PDS.

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[1] See: *Cardwell v. Perthen*, 2007 BCCA 313.
[2] See: *Nixon v. MacIver*, 2016 BCCA 8.
[3] See: *McCluskie v. Reynolds et al (1998)*, 65 BCLR (3d) 191 (SC).
[4] Se: *Nixon*, at para. 48.

20. While the sale contract contains additional terms, none of them address property inspections. The respondent says, and the applicant does not dispute, that the applicant could have arranged for a property inspection prior to entering the contract but did not. Here, the applicant alleges the respondent must have known about the sound and recklessly chose to ignore it. She alleges the respondent incorrectly filled out the PDS.

21. The sale completed on March 1, 2022, and the applicant took possession on March 3.

Water Leak

22. The applicant says she heard an unexplained noise her first night in the property. She thought the noise may be from the furnace or water tank, so she made a number of calls to find someone to investigate.

23. On April 20, she says she hired Alpine Gas Ltd. to determine if the furnace or hot water tank was the noise's source. After its technician turned off the furnace and the noise persisted, the technician suggested turning off the water main. I infer she did so, and the noise then stopped, since the applicant says this was how she discovered the leak.

24. On May 20, the applicant hired a plumber. They attended the property and repaired the leak by replacing a section of the line under the applicant's yard up into the applicant's bedroom closet. The plumber charged $1,659.74. The applicant also paid a laborer $1,863.75 to level concrete, repair drywall, patch, paint, dig, and later, fill the water line trench.

25. The applicant says she could only hear the noise at night when the rest of the house was quiet. The applicant says she recorded the noise with a video camera. A noise is clearly audible in the video. It remains steady in pitch and volume, and to my untrained ear, sounds like air movement. The applicant says there is no way the respondent could not have known about the noise and alleges they chose to ignore it.

26. The respondent denies knowing about a suspicious noise. They say the sound in the video sounds like the bathroom fan that engages when a light is on. They say they never heard any noise that indicated a water leak and notes that the applicant herself needed to hire professionals to determine the noise's source. In reply, the applicant acknowledged the noise sounded like air circulating and that it could be mistaken for the furnace, water tank, or a bathroom fan.

27. The respondent says it is suspicious that the applicant took so long to arrange for a plumber if they noticed the sound on the first night and determined it was a water leak on April 20. The respondent says if it was an obvious water leak, the applicant would have arranged for an emergency plumber.

28. So, was the water leak a patent defect? For the reasons below, I find it was.

29. As noted above, a patent defect is one that can be found on a reasonable inspection. Here, the respondent says she immediately discovered the noise on her first night in the property and says the noise was audible when the house was quiet. She says a third party furnace technician was able to successfully identify the problem as being with the water main in one visit.

30. While determining the source of the specific water leak may have required additional investigation, I find the circumstances prove a reasonable inspection would have identified a potential issue. A furnace technician, who is neither a plumber nor a property inspector, was able to suggest the water main as the noise's source on their first visit.

31. As I note above, the applicant had no obligation to proactively search for problems in the house before the sale. There is no suggestion the applicant took steps to conceal either the leak or the noise pointing to it. So, I find a house inspection would likely have found the water issue, and it is a patent defect. This means the applicant is not entitled to a remedy, and I dismiss this aspect of her claim.

32. If I am incorrect in my analysis and the water leak was a latent defect, I still would not find in the applicant's favour. The parties agree the sound can be easily mistaken for

something else that would operate in the normal course of the house's operation, such as a fan or the furnace.

33. The leak's only evidence was the noise. The applicant does not say she found evidence of pooling or water damage. The respondent says city water services are unmetered, which means they would not know if there was unusually high water usage.[5] As I note above, the PDS only asks whether the respondent is "aware of" any issues, not whether any exist, which means the respondent's statement was reasonable.

34. I find this insufficient to prove the respondent acted recklessly by failing to investigate the sound and would still dismiss.

Ants

35. The same analysis of patent and latent defects applies to the ant infestation.

36. The applicant says she began to discover ants in the house as the weather warmed. In June, she hired Wipe Out Pest Control Ltd. to address the ants. Wipe Out attended 3 times and applied treatments. She says she found 4 ant nests in the property.

37. The respondent says they never experienced more than occasional sightings of ants in their house. While they reference evidence from the Province of British Columbia's website respecting pest control for carpenter ants, such evidence is unreliable because website content can change over time. CRT staff tell parties during the CRT process not to submit website links. So, I did not attempt to access the embedded link.

38. The applicant provided a number of photos showing debris from the ants, including sawdust, nest material, and damaged wood. It is unclear from the photos whether anyone could have found the damage with a reasonable inspection. However, the applicant herself says "No inspection could have suspected there were ants at the

[5] This is unlike the circumstances in *Bissoondatt v. Le Gal*, 2023 BCCRT 117, where the property's water bill was evidence of higher-than-typical usage.

end of November," so I accept the defect was not patent. I note there is no allegation that the respondent actively concealed any infestation, so if the defect were patent, the applicant would not have proved her claim in any event.

39. So, I find the ant infestation is a latent defect. There is limited evidence the respondent was aware of, or somehow reckless in respect of, the infestation. While the applicant says the pest control technician told her the nests had been there for "many years," this is hearsay evidence.

40. Hearsay, in brief, is a statement made outside of this proceeding that the applicant relies on to prove the truth of its content. While the CRT may accept hearsay evidence, I choose not to do so here. Even if I accepted the hearsay statement that the ants' nests had been there for many years, that would not prove the respondent had actual knowledge of them.

41. I also note the applicant provided the pest control technician's phone number. To the extent they did so to allow me to contact the technician to investigate or ask questions, I note that parties are told during the case management phase they are responsible to provide all relevant evidence by the deadline provided. At a minimum, this allows the other party an opportunity to review it and respond.

42. So, I find the applicant has not proved her claim.

43. Under CRTA section 49 and the 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 the applicant's claim for CRT fees. The respondent did not pay any CRT fees and neither party claimed any dispute-related expenses.

ORDERS

44. I dismiss the applicant's claims and this dispute.

Christopher C. Rivers, Tribunal Member