



# Civil Resolution Tribunal

Date Issued: May 16, 2024

File: SC-2023-006009

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nicholls v. Huynh*, 2024 BCCRT 460

B E T W E E N :

SALLY NICHOLLS and STEVEN LUKE NICHOLLS

**APPLICANTS**

A N D :

KEVIN HUYNH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. The applicants, Sally Nicholls and Steven Luke Nicholls, purchased a residential property from the respondent, Kevin Huynh, in May 2023. The applicants say that when they moved in, the house was not clean and several of the appliances were not working. They say this was a breach of the parties' contract of purchase and sale, and they claim \$5,000 for replacing the appliances and cleaning the property.

2. The respondent says that the applicants bought the house without an inspection, so he is not responsible for the appliance replacement costs.
3. Sally Nicholls represents both applicants. The respondent is self-represented.

## **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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.
7. 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**

8. The issue in this dispute is whether the respondent must pay the applicants \$5,000 for replacement appliances and cleaning costs.

## EVIDENCE AND ANALYSIS

9. In this civil proceeding, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. The respondent filed a Dispute Response and provided evidence, but did not provide written submissions, despite having the opportunity to do so.
10. The parties' contract of purchase and sale shows that the applicants purchased the property with a May 25, 2023 completion date. The applicants took possession of the property on the same day.
11. The contract of purchase and sale says that the purchase price includes the fridge, stove, dishwasher, washer, dryer, microwave, blinds and window coverings, and keys. The contract also says that "any appliance or mechanical items included in this contract are used and not warranted by the Seller but must be in working order upon possession."
12. The applicants say that after they took possession, they noticed that the fridge, stove, dishwasher, washer, and dryer were not working. The applicants say that they had to replace the washer and dryer right away, but could not afford to replace the fridge, stove, and dishwasher until October 2023. The applicants say that they paid approximately \$7,000 to replace the appliances. However, they have limited their claim to \$5,000, which is the CRT's small claims monetary limit.
13. The applicants submitted a video of the fridge taken on May 29, 2023. In the video, there is an audible and persistent beeping noise, which the applicants say is coming from the fridge. The video shows that the fridge's digital temperature display is blank for both the fridge and freezer. The person taking the video, who I infer is Ms. Nicholls, explains that the fridge is warm and that she cannot adjust the temperature.
14. The applicants also submitted a video showing Ms. Nicholls attempting to ignite two of the stove burners. She turns the burner knobs repeatedly, but the burners do not ignite.

15. The applicants also submitted a file that they say is a video of the dishwasher. However, the file in evidence contains audio only. The audio includes Ms. Nicholls' voice describing her attempt to open the dishwasher. She says that the dishwasher can be turned on, but cannot be opened. She says there is no lock preventing the dishwasher from opening.
16. The applicants say the dryer did not function to dry clothing. They also say that the washer started to smoke when they tried to use it. The applicants submitted an audio file in which Ms. Nicholls describes the dryer not working. In the video, Ms. Nicholls says she did a load of laundry on Saturday, and that she is still trying to dry the clothes on Monday. The applicants did not submit video or photo evidence of the washer smoking.
17. Lastly, the applicants submitted a statement from their realtor saying that upon possession, the house was dirty and many of the appliances were faulty or did not work. However, the realtor's statement does not specifically address which appliances were not working.
18. In his Dispute Response, the respondent says that everything in the home was in working order. However, he provided no evidence in support of this, such as photographs, videos, or a statement from his former tenants about the appliances' condition. In any event, the respondent says that it does not matter if the appliances were not working, because the applicants agreed to buy the house without an inspection. I disagree. The parties' contract of purchase and sale clearly requires appliances to be in working order upon possession. This requirement is not affected by the applicants not having the house inspected. I find the respondent was required to provide the included appliances in working order as of the possession date.
19. Based on the applicants' evidence described above, and in the absence of any evidence to the contrary from the respondent, I accept that the fridge, stove, dishwasher, and dryer were not in working order upon possession. I find this was a breach of the parties' contract of purchase and sale, and the applicants are entitled to the replacement cost of these items.

20. The applicants submitted an invoice showing that they paid \$4,620.32 for a replacement fridge, stove, and dishwasher. The respondent does not dispute this amount, and I find it reasonable. I order the respondent to pay the applicants this amount. The applicants are entitled to pre-judgment interest on this amount under the *Court Order Interest Act* from October 29, 2023, the date of the invoice, to the date of this decision. This equals \$130.28.
21. The applicants also submitted an invoice showing that they paid \$1,404.48 for a replacement washer and dryer. The invoice shows that each appliance cost \$627 plus tax. However, as noted, the CRT's small claims monetary limit is \$5,000. I find the applicants are entitled to \$379.68 for the replacement dryer, which brings the total damages award to the claimed \$5,000. The applicants are entitled to pre-judgment interest on the \$379.68 from June 3, 2023, the date of the invoice, to the date of this decision. This equals \$12.09.
22. Given my conclusion that the applicants are entitled to the full \$5,000 claimed for the fridge, stove, dishwasher, and dryer, I find I do not need to address their arguments about the house cleaning or the washer.

## **CRT FEES AND EXPENSES**

23. 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. The applicants were successful, so I find they are entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

24. Within 30 days of this decision, I order the respondent to pay the applicants a total of \$5,317.37, broken down as follows:
  - a. \$5,000 in damages,

- b. \$142.37 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

25. The applicants are entitled to post-judgment interest, as applicable.

26. This is a validated decision and order. Under CRTA section 58.1, 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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Alison Wake, Tribunal Member