



Civil Resolution Tribunal

Date Issued: June 7, 2024

File: SC-2023-005741

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rodriguez v. Killin*, 2024 BCCRT 514

BETWEEN:

CARLOS QUEREDA RODRIGUEZ

APPLICANT

AND:

DAVID BLAKE KILLIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Carlos Quereda Rodriguez bought a home from David Blake Killin. Mr. Rodriguez says that when he took possession of the home, the air conditioner and dishwasher did not work. He also says there was a plumbing leak, hooks left in the walls, and

personal property left behind. Mr. Rodriguez seeks \$4,500 in damages, without providing a breakdown.

2. Mr. Killin says everything worked when he moved out, and he filled out the property disclosure statement (PDS) honestly. Mr. Killin says he owes nothing.
3. Each party is self-represented. As I explain below, I dismiss Mr. Rodriguez's claims.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. The CRT conducts most hearings in writing, but it has discretion to decide the format of the hearing, including by telephone or videoconference. In this dispute, the parties do not explicitly question each other's credibility, but they disagree on fundamental facts like when certain equipment stopped working. Neither party requested an oral hearing, and in the circumstances of this dispute, I find that cross-examination is unlikely to assist in answering these questions. I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.
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 court.

ISSUES

7. The issues in this dispute are:

- a. Was the PDS incorporated into the parties' contract?
- b. Did Mr. Killin breach the contract?
- c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

- 8. As the applicant in this civil proceeding, Mr. Rodriguez must prove his 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.
- 9. On April 16, 2022, Mr. Killin accepted Mr. Rodriguez's offer to purchase his home, subject to conditions that included an inspection. Mr. Rodriguez had the home professionally inspected on April 25, 2022. The contract said the sale was to complete on August 23, 2022, and Mr. Rodriguez was to take possession the next day. I infer that the parties amended their contract because Mr. Killin says Mr. Rodriguez took possession in June 2022, and Mr. Rodriguez's repair invoices are dated in July 2022.
- 10. Mr. Killin had previously completed a March 16, 2022 PDS. He says that although he provided Mr. Rodriguez with a copy, it was not included in the parties' contract that Mr. Rodriguez's agent prepared. On review of the contract and the PDS, I agree. The PDS, at the top, said that it constitutes a representation under any contract of purchase and sale if so agreed in writing. The contract's clause 18 said that Mr. Killin made no representations other than those set out in the contract and those representations set out in the PDS, if the PDS is incorporated into and forms part of the contract. There is nothing in the evidence before me to conclude that the PDS was incorporated into the contract. Therefore, I find that Mr. Rodriguez cannot rely on any representations in the PDS, and his claim based on negligent or fraudulent misrepresentation must fail.
- 11. I turn to the contract. Clause 7 said the purchase price included all appliances and heating and air conditioning fixtures. Clause 8 said all included items will be in

substantially the same condition at the possession date as when Mr. Rodriguez viewed them on April 12, 2022.

12. Although Mr. Rodriguez initially referred to it as an air conditioning unit, there is no dispute that it is a heat pump that cools the home in warm temperatures and warms it in cool temperatures. Mr. Rodriguez says the heat pump's cooling function did not work when he took possession. He hired Whisky Jack HVAC Ltd. to inspect the heat pump. The undated invoice said the heat pump had a leak somewhere and had lost refrigerant. It recommended replacing the heat pump because it was 15 years old and had a 15-year life cycle. These observations are unchallenged, and I accept them.
13. I take from the Whisky Jack inspection that the heat pump still worked to heat the home, but could not cool the home. This is consistent with the April 25, 2022 home inspection report, which said the heat pump was functioning but the cooling function was not tested because it was too cold outside. The report also said that because the heat pump was 15 years old, Mr. Rodriguez should budget to replace it.
14. Mr. Killin says when he set his thermostat to heat, the system blew warm air, and when he set the thermostat to cool, the system blew cold air. If I accept Mr. Killin's evidence on this point, and I have no reason not to, this means that the refrigerant leak occurred sometime after Mr. Killin last used the heat pump to cool the home at the end of summer or early fall 2021. Given the heat pump's age, this is entirely possible. As the applicant in this dispute, Mr. Rodriguez must prove it is more likely than not that the refrigerant leak happened before early fall 2021. I find he has not done so. I find the heat pump was in substantially the same condition when he took possession as when he viewed it on April 12, 2022. It was still a 15-year-old heat pump that worked to heat the home and was nearing the end of its life cycle.
15. I turn to the dishwasher. Mr. Rodriguez says it did not work at all. Mr. Killin says it worked when he moved out. The home inspector did not test appliances. In July 2022, Mr. Rodriguez replaced the dishwasher for \$1,233.69. However, there is no professional opinion about what, if anything, was wrong with the dishwasher. Mr. Killin

says his experience with the dishwasher was that because the bottom rack ran in grooves it could become dislodged and then the door would not close. In those cases, it made a clicking noise as the door tried to lock, and would not turn on. Mr. Killin says Mr. Rodriguez removed it, unplugged it, and attempted to repair it, but could not get it to work again. Importantly, Mr. Rodriguez does not address any of this. It is also supported by text messages between the parties' realtors. Given this, I accept Mr. Killin's explanation, and I find Mr. Rodriguez has not established that there was anything wrong with the dishwasher when he took possession.

16. Next, Mr. Rodriguez says a malfunctioning showerhead leaked and damaged the garage ceiling, resulting in \$400 in repair costs. The invoices are dated July 4, 2022. Mr. Killin says this leak developed after Mr. Rodriguez took possession. Based on the invoice, and the photos in evidence, I agree. Mr. Rodriguez does not point to stains or mould growth or other evidence of a previous water leak. The plumber's invoice does not suggest a previous water leak. I find it was a spontaneous leak and not a contractual breach.
17. Mr. Rodriguez says Mr. Killin left hooks in the wall that he had to remove, patch and paint for about \$200. However, the contract did not require Mr. Killin to remove hooks or patch holes, so I find there was no breach.
18. Lastly, Mr. Rodriguez says Mr. Killin left behind Christmas lights and "other personal property" that he had to remove. The contract required Mr. Killin to leave the property in clean condition, free and clear of all refuse and personal possessions. Mr. Killin acknowledges that he accidentally left a strand of Christmas lights up, so he did technically breach the contract. There is no evidence about any other personal property. I considered awarding damages for the Christmas lights, but Mr. Rodriguez does not say whether he incurred any costs, or how much time it took, to remove and dispose of the Christmas lights. I find he has not proven any damages related to the personal property left behind.
19. In summary, I find Mr. Rodriguez has not proven his claims.

CRT FEES AND EXPENSES

20. Under CRTA section 49 of the CRTA and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Killin was successful but did not pay CRT fees. I dismiss Mr. Rodriguez's claim for CRT fees. Neither party claims dispute-related expenses.

ORDER

21. I dismiss Mr. Rodriguez's claims and this dispute.

Micah Carmody, Tribunal Member