



Civil Resolution Tribunal

Date Issued: October 4, 2019

File: SC-2019-001022

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Taylor v. Larbi et al*, 2019 BCCRT 1165

B E T W E E N :

CAROLYN TAYLOR

APPLICANT

A N D :

JACK LARBI and CAROLYN CURRIE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. In June 2018 the applicant, Carolyn Taylor, bought a strata property from the respondents, Jack Larbi and Carolyn Currie. The applicant says the clothes dryer was not installed properly and the respondents failed to disclose that its duct vented into the ceiling and was not connected to any external duct or ventilation. The

applicant wants the respondents to reimburse her \$1,269.65 for the cost of repairing the clothes dryer vent.

2. The respondents say they had no knowledge of any problems with the clothes dryer vent before they sold the property, and they do not owe the applicant anything.
3. All parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something:
 - b. order a party to pay money:
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondents improperly failed to disclose a venting issue with the clothes dryer they sold the applicant, and if so, whether they are required to reimburse the applicant \$1,269.65 for the cost of repairing the clothes dryer vent.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove her claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.
11. It is undisputed that at some point in the spring of 2018 the respondents listed their strata property for sale. Prior to listing, they renovated their laundry room by retiling, repainting, and replacing the washer and dryer. They say they removed the previous washer and dryer and installed the new ones in the exact same location,

and that they did not modify the dryer ducts or venting while they owned the property.

12. On June 26, 2018 the parties entered into a contract of purchase and sale under which the applicant bought the strata property from the respondents. The contract was subject to, among other things, the applicant obtaining and approving an inspection of the property, and the applicant receiving and approving a property disclosure statement.
13. The applicant hired a home inspector who inspected the property on June 30, 2018 and provided a report. The report indicates that the inspector could not inspect what they could not see, and moving furniture, dismantling, or lighting gas pilots was not within the scope of the inspection. It said the report was not an exhaustive technical evaluation. With respect to the clothes dryer, the report says it operated when tested, it used an older style of plastic vent piping, and it appeared to be vented to the exterior. The report also indicates that this was a limited review due to personal effects and/or restricted access.
14. At some point after June 30, 2018 the parties agreed to remove the subjects and closed the sale. The applicant says she bought the property on July 27, 2018, and the respondents do not dispute this, so I find this was the closing date.
15. At some point after taking possession of the property, the applicant discovered that the clothes dryer duct was not connected to any external duct or vent and was venting air into the space above the ceiling. The applicant says there was no way for her to discover this defect without cutting a hole in the drywall of the ceiling in the laundry room. I presume that is how she discovered it, though she did not explain how she first suspected a problem. The applicant submitted a picture and video she took which she says show the disconnected clothes dryer duct. On balance, I am satisfied that when the applicant took possession of the property the clothes dryer vent was not properly connected to any duct or vent above the ceiling.

16. The respondents say they rented the property to the same tenant for the previous 10 years, during which time the strata completed an envelope retrograde project and the building was “redone from top to bottom.” They say they were not aware of the strata installing or restoring the venting incorrectly, as they could not see through the ceiling drywall, and they never received a complaint from their tenants.
17. The respondents say that before the sale closed the the applicant asked them to install fireproof wrapping over the standard wrap around the hose from the dryer to the ceiling vent hole. The evidence indicates that a professional completed this work and invoiced the respondents for it on July 18, 2018. The respondents say the new dryer hose, including the requested fireproof foil, connected to the original hole in the ceiling.
18. The respondents say the problem with the dryer vent is the strata’s responsibility because the problem with the venting was inside the ceiling and exterior wall. The applicant says this dispute is not about the connection of the ducting inside the ceiling to the exterior building vent, and that the strata has already dealt with that issue. The applicant says this dispute is about the fact that the respondents did not connect the new clothes dryer they installed to the ducting in the ceiling. She says if this was not an issue when the respondents’ tenant lived in the property, then the problem must have been introduced during the respondents’ renovations just before listing the property for sale.
19. The respondents say they never knew there was a problem with the dryer duct or vent when they sold the property, and they did not hide anything from the applicant. They submitted the property disclosure statement which shows all items are crossed out with a handwritten note stating the respondents never lived in the property.
20. In a real estate transaction like this one, the buyer is expected to make reasonable inquiries and conduct a reasonable inspection of the property. Unless the seller breaches the contract, commits fraud, or fails to disclose a latent defect of which it was aware, the buyer assumes the risk for any defects in the condition or quality of

the property (see *Nixon v. MacIver*, 2016 BCCA 8). This is the principle of “buyer beware.”

21. The applicant has not alleged, nor does the evidence suggest, that the respondents breached the contract or committed fraud. Therefore, the issue I must determine is whether the respondents failed to disclose a latent defect they knew about before they sold property.
22. A latent defect is one that cannot be discovered through a reasonable inspection of the property, including a defect that renders the property dangerous or unfit for living (see *Cardwell v. Perthen*, 2007 BCCA 313). On the evidence before me I am satisfied that the problem with the dryer vent was not discoverable through a reasonable inspection and that it was a latent defect.
23. If the respondents knew about the latent defect or recklessly disregarded its existence, they were legally required to disclose it to the applicant prior to selling the property. The applicant is responsible for proving that the respondents knew or should have known about the latent defect (see *McCluskie v. Reynolds*, 1998 CanLII 5384 (BC SC)). On the evidence before me, I am not satisfied that the applicant has met this burden.
24. The details surrounding the respondents’ installation of the new clothes dryer prior to selling the property are somewhat unclear, and there is no documentary evidence about the installation. The respondents deny that the dryer was installed incorrectly or that they knew of the defect. Aside from the applicant’s assertion, there is no documentary evidence establishing otherwise. I also find there is insufficient evidence to establish that the respondents should have known about the latent defect. It is unclear if the respondents installed the dryer themselves or hired someone else to do it. I find the evidence before me does not establish any reason the respondents should have suspected there was any problem with the clothes dryer before selling the property. I also note the property disclosure statement does not contain any information about the condition of the clothes dryer. For all of these

reasons, I find the applicant has not established that the respondents knew or should have known about the latent defect, and I dismiss her claims.

25. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful, I find she is not entitled to reimbursement of her tribunal fees, and she has not claimed any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member