



Civil Resolution Tribunal

Date Issued: July 04, 2024

File: SC-2023-009072

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nelson v. Nicholson*, 2024 BCCRT 637

B E T W E E N :

JARED NELSON

APPLICANT

A N D :

JONATHAN NICHOLSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Debra Febril

INTRODUCTION

1. Jared Nelson together with two others purchased a house from Jonathan Nicholson. The applicant says the parties' Contract of Purchase and Sale contained a warranty for appliances included in the sale. The applicant says the fridge was not in proper working condition when he moved in and so the respondent breached the contract. He claims \$1,211 for the fridge's inspection, parts, and repairs.

2. The respondent says the fridge was 16 years old and an original appliance when he bought the home himself. He says the dispenser feature never worked but the appliance still functions as a refrigerator and freezer. The Respondent says the fridge was also in the same condition it was in at the time the applicant viewed the home.
3. Each party is self-represented. As I explain below, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. These are the CRT's formal written reasons.
5. Section 39 of the CRTA 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. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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.
7. 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.
8. In the Dispute Notice issued at the start of this proceeding, the applicant named the respondent as "Jonothan Nicholson". Based on the respondent's Dispute Response and the parties' submissions, I find this is a misspelling, and that the respondent's

correct name is “Jonathan Nicholson”. So, I have exercised my discretion under CRTA section 61 and have amended the respondent’s name in the style of cause above.

ISSUE

9. The issue in this dispute is whether the respondent breached a term of the parties’ contract, and if so, is the applicant entitled to the cost of the fridge repairs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities. This means more likely than not. 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.
11. The parties each submitted the 9-page Contract of Purchase and Sale as evidence. The contract is dated May 15, 2023. It says the sale would be completed on July 24, 2023. The viewing date is listed as May 14, 2023 and the possession date as July 26, 2023.
12. The principle of “buyer beware” generally applies to home sales. A buyer is required to make reasonable pre-purchase enquiries about the property. Exceptions include negligent or fraudulent misrepresentations and the seller’s duty to disclose known latent defects (see *Nixon v MacIver*, 2016 BCCA 8).
13. A latent defect is one that a buyer cannot discover through reasonable inspection and includes defects which make the property unfit or dangerous for living. Patent defects can be discovered through inquiry or reasonable inspection. A seller does not have to disclose patent defects to a buyer but cannot actively conceal them (see *Cardwell v Perthen*, 2007 BCCA 313).
14. The parties’ contract says: “The Property and all included items will be in substantially the same condition at the Possession date (July 26, 2023) as when

viewed by the Buyer on May 14, 2023.” The contract also says: “...all of the included items will be in working condition as of the Possession Date”.

15. For the reasons that follow I find the applicant has not proven their claim that the respondent breached a term of their contract. As such, I find the applicant is not entitled to the \$1,211 for the appliance and dismiss their claim.

What was the Refrigerator's Condition on July 26, 2023?

16. It is undisputed that the refrigerator was included in the contract.
17. The applicant says they discovered that the ice/water feature of the fridge was not working when they moved in. In support of this claim they submitted an undated invoice from Priority Appliance Service as evidence. The invoice shows the applicant's main concern about the appliance was that it was not making ice. The technician does not say there were any problems with the primary functions of refrigeration and freezing foods. The applicant was also informed by the technician there was a missing filter and a recall of the make and model of refrigerator having to do with this added feature. This recall is not within the respondents' control considering the age of the fridge.
18. I find this evidence is not sufficient to prove the appliance was not in proper working order on July 26, 2023, or that it was not in substantially the same condition it was on May 14, 2023.
19. The respondent says he did not breach the contract because he provided a working fridge as agreed to on the date of possession. I have based my decision on the contract terms related to the appliances only, not the terms intended to apply to the entire residential property.
20. The respondent has submitted as contradictory evidence an inspection report from November 12, 2020. I note that the full name and qualifications are stated in this document. The report says that all kitchen appliances were tested but some nearing the end of service life were not fully functional. I accept this as expert evidence that

supports the respondent's position that the fridge was 16 years old, and the ice/water feature of the fridge did not work prior to May14, 2023,

21. The applicant also provides evidence that there was a recall on the fridge model related to the ice-water feature. I find this evidence further supports the respondent's claim that the fridge was in the same condition as when it was viewed by the applicant.

22. Overall, I find the refrigerator was in substantially the same condition it was in on the date of viewing and the date of possession. I find that the ice-feature function was a patent defect that could have been discovered upon inspection prior to or on the possession date and the fridge was still in proper working order despite having an added feature that was faulty.

23. I also accept the respondent's submissions that he did not purposefully deceive or lie and find no evidence presented that he was negligent or fraudulent. As such, buyer beware applies and the respondent is not in breach of the terms in the parties' contract and is not responsible for the fridge's ice-water dispenser inspection, parts, and repairs.

Conclusion

24. In viewing the submissions, evidence and contract as a whole, I find that on May 15, 2023 the parties agreed that all included appliances to be in the same condition on the possession date of July 26, 2023. I find the applicant has not proven that it was more likely than not the fridge was not working properly as a fridge or that it was not in the same condition he viewed it in.

25. I find the applicant has not proved the respondent breached the parties' contract. As a result, I dismiss the applicants claim.

CRT Fees and Dispute Related Expenses

26. Under section 49 of the CRTA and 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 fee claim. The respondent did not claim any fees or expenses.

ORDER

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

Debra Febril, Tribunal Member