IN THE DISPUTES TRIBUNAL **[2016] NZDT 971**

BETWEEN	**DN** APPLICANT
AND	**VM** RESPONDENT
Date of Order:	19 October 2016
Referee:	Referee Brown

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] DN purchased a residential property from VM at an auction in December 2015. DN took possession on 5 February 2016. In May 2016 when the weather became cooler, DN tried to turn on the Bon-Air Vulcan ducted gas heating system and found it would not work properly.

[2] DN claims $9,731.32 calculated as $468.99 for the diagnosis of the problem and $9,262.33 to replace the gas central heating unit.

Issues

[3] The issues to be decided are:

a. Is the gas central heating system a chattel or a fixture? Is it attached or affixed to the house? Is it intended to provide permanent heating for the house?

b. If the gas central heating system is a chattel, was it in reasonable working order and in the same state of repair as at the date of the agreement, at the time of settlement?

c. If not, is the compensation reasonable to restore it to reasonable working order?

[4] The general principles of the law of contract apply to this dispute. All of the terms of the agreement can be found in the written contract. DN argues that VM has breached clause 8.2 of the Sale of Real Estate by Auction contract because the gas central heating unit is a chattel that was not working.

[5] Clause 8.2 states: The vendor warrants and undertakes that at settlement:

(1) The chattels are delivered to the purchaser in reasonable working order, where applicable, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver the chattels shall only create a right of compensation.

[6] DN submits that the gas heating system is a chattel because it is not hardwired to the house; it is connected via a cord to a normal electrical socket. It only has three ducts clipped onto it and four screws attaching it to the roof space. He says it would only take about 30 minutes to remove it by disconnecting the ducts and screws.

[7] However, VM submits that the gas central hearing system is not a chattel and is therefore not covered by clause 8.2. VM states that the gas heating system is a fixture because it was affixed, annexed or attached to the house via hardwired electrical, ducting and gas connections. The system is not a standalone system because it is installed in the house. It was installed in the house for the purpose of providing permanent central heating. Finally, it is not listed as a chattel on the front of the agreement.

[8] The law regards fixtures as being part of and affixed to the property being sold and they pass to the purchaser under a sale automatically. A typical fixture will be attached to the land in a permanent way such that removing it would cause noticeable damage. Examples of fixtures include an attached garage, a carport, a bolted down garden shed or spa pool, attached mantelpiece or bookshelves. Chattels are things that can be more easily removed and are not necessarily attached to the land. The vendor is able to take chattels with them, so long as they do not form part of the chattels in the sale.

[9] What is a chattel or a fixture often depends on the circumstances. In considering what is a fixture or a chattel it is necessary to consider

[10] The degree of annexation/ connection to the property, and

[11] The object and purpose of the attachment.

[12] In this instance, the gas heating system is attached to the house by screws and is connected to gas pipes and ducting. While it appears that the main power supply is not hardwired, there is another electrical cable coming from the unit that may be connected to a sensor. I am satisfied that there is a high degree of attachment to the house. Several specialist tradesmen such as an electrician and plumber would be required to remove the heating system. It is not a heater that could be easily unplugged and removed such as an electric fan heater. The ducting runs right through the house to each room. In addition, the purpose of the gas heating system is to provide permanent central heating for the whole house. Having regard to all of these factors, I am satisfied that the heating system is a fixture that was part of the property sold and is not a chattel. Given that it is not listed as a

chattel, it appears that it was the intention of the parties that it was not considered to be a chattel.

[13] Therefore, I find that the gas heating system is not covered by the vendor warranties in clause 8.2. There is no requirement to provide fixtures in any particular condition and therefore there is no basis in law for the claim of compensation against VM. Therefore, the claim is dismissed.