



Civil Resolution Tribunal

Date Issued: May 14, 2018

File: SC-2017-003611

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Barten v. Tiesu*, 2018 BCCRT 185

B E T W E E N :

Sharleen Barten

APPLICANT

A N D :

Debi Tiesu

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This case is about a finder's fee. The applicant Sharleen Barten says the respondent Debi Tiesu agreed to pay her a finder's fee if she found a person to buy her house. The applicant found a buyer and the sale completed. The applicant says the respondent refused to pay the finder's fee.

2. The respondent says there was no agreement about the finder's fee amount. She agrees that the applicant asked for \$1,300 for the finder's fee, but she did not agree. She says she told the applicant they could come to "some kind of arrangement." She says she later offered to pay the applicant \$200 for passing along the buyer's phone number.
3. Both 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 3.1 of the *Civil Resolution Tribunal Act* (Act). 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money and/or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issue in this disputes are:
 - a. Did the applicant and respondent agree to a finder's fee?
 - b. Did the applicant and respondent agree on the amount of the finder's fee?
 - c. What is an appropriate remedy?

EVIDENCE AND ANALYSIS

9. In this civil claim the burden is on the applicant to prove her claim on a balance of probabilities. Although I have reviewed all of the evidence, I only refer to the items of evidence that were relevant to my decision.
10. The text messages filed by the applicant suggest that the respondent and applicant had discussed a finder's fee. In particular, a text from the respondent to the applicant's former tenant, sent June 8, 2017, says "No need to discuss finders (sic) fee unless sale is completed."
11. The applicant's former tenant provided a statement that on June 17, 2017 he observed the respondent telling the applicant she would pay her a finder's fee. There were also text messages filed by the applicant which suggest the tenant was somehow involved in a personal dispute between the parties, but his precise role was never explained.
12. Despite the tenant's role as a go-between in the communications between the parties, I accept his statement as evidence there was a conversation between the parties, including an offer that the respondent would pay the applicant a finder's fee.
13. The respondent concedes that the applicant requested \$1,300 for a finder's fee. The respondent says she did not agree to that amount, but said "I am sure we can

come to some kind of arrangement.” She suggested \$200 might be appropriate, but this amount was not accepted.

14. After the applicant furnished the buyer, she texted the respondent and asked “I was wondering if you had something planned for the finder’s fee?” This question supports the analysis that the parties had not agreed on a finder’s fee amount, in advance.
15. The applicant then asserts “You agreed to pay me a finder’s fee”, and the respondent replies “Plans change.” The respondent’s text acknowledges that a finder’s fee was discussed and that she had agreed to pay one.
16. In this situation, I find that the discussion was nothing more than an illusory promise. The law says that a promise to do something is not binding as a contract where it has a lack of mutuality and/or is indefinite. Here the promise was not mutual as to the amount of the finder’s fee. This left any agreement too indefinite to be performed. Only the respondent’s obligation was contemplated fully, so there was a lack of mutuality. The concept of an illusory promise was described in *Emberley v. Capital Crane Limited* 2017 CanLII 21793 (NL PC).
17. The parties never agreed on an amount, meaning that even if their discussion resulted in a contract, the contract could not be fulfilled because it was missing a fundamental term. Before providing a buyer, the applicant would have been wise to ensure there was a written agreement about the finder’s fee, including an amount. With only a verbal promise to pay an unspecified amount, there was no enforceable contract.
18. The applicant submits that the parties agreed to a finder’s fee in the amount of one month’s rent, \$1,300. None of the evidence she filed supports her account. There was no written agreement filed in evidence.
19. I find the applicant has not met the burden of proving there was any enforceable agreement about the finder’s fee. Therefore, the applicant’s dispute is dismissed.

ORDER

20. I dismiss the applicant's dispute.

Julie K. Gibson, Tribunal Member