



# Civil Resolution Tribunal

Date Issued: December 27, 2018

File: SC-2018-003320

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lam v. Ascent Real Estate Management Corporation*, 2018 BCCRT 907

**B E T W E E N :**

Stephen Lam

**APPLICANT**

**A N D :**

Ascent Real Estate Management Corporation

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about contractual entitlement to unused vacation pay. The applicant, Stephen Lam, worked as a realtor/strata agent for the respondent, Ascent Real

Estate Management Corporation. The applicant says that when his contract ended in April 2018, the respondent failed to pay him for unused vacation time. The applicant claims \$4,180.

2. The respondent says the *Employment Standards Act* (ESA) does not apply and the parties' contract did not provide for payment for unused vacation time. The applicant is self-represented and the respondent is represented by Sue Colosie, an employee or principal.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
5. 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.

6. 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, or order any other terms or conditions the tribunal considers appropriate.
7. I agree with the respondent that the ESA does not apply to this dispute. It is undisputed that the applicant is a strata agent licensed under Part 2 of the *Real Estate Services Act*. As such, the applicant is excluded from the ESA's application, under section 3(1) of the ESA and Regulation 31(m). The result is that the applicant has no statutory entitlement to vacation pay under the ESA. The applicant's only potential remedy is under the parties' contract, as discussed below.

## **ISSUE**

8. The issue in this dispute is whether the parties' contract requires the respondent to pay the applicant for unused vacation time, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and submissions below as necessary to explain my decision.
10. The respondent first employed the applicant in 2007. It is undisputed the parties' contract provided for 4 weeks (20 days) of vacation time. The applicant says in 2017, he took 14 days, leaving 6 vacation days unused. The applicant says to accommodate the respondent's staffing and workload concerns, he did not take his remaining 6 days in 2017.
11. The applicant says between January 1 and April 20, 2018, he accumulated 6 days' vacation under the parties' contract. The applicant submitted his resignation on April 6 and his last day of work was April 20, 2018. None of this is disputed.

12. It is undisputed the respondent did not “pay out” the applicant for unused vacation time, after the applicant terminated his employment. The applicant says the respondent “had had precedent which a former employee was released with pay prematurely” and that the respondent “did not release me prematurely nor compensate in form of money”. The applicant says “the remedy was equivalent to my unused vacation”.
13. I find the applicant’s submission quoted above is not entirely clear. However, I find the applicant’s fundamental point is that he says he is entitled to be paid out his unused vacation pay under the parties’ contract, which the applicant says amounts to \$4,180.
14. The respondent does not challenge the applicant’s calculation. The respondent admits the contract provided for 4 weeks’ vacation time and that during the vacation the employee is entitled to ongoing commission payments. The respondent also notes that the contract provides that vacation is to be taken when the employee arranges for coverage of the employee’s portfolio. None of this is disputed by the applicant, who did not provide a reply submission despite being given the opportunity to do so.
15. The respondent’s central position is the parties’ contract does not provide for payment in lieu of vacation being taken. Having reviewed the parties’ contract, I agree. Given the ESA does not apply, and the contract does not provide for payment in lieu of vacation time, I find the applicant’s claim cannot succeed. This conclusion is supported by the decision cited by the respondent, *Geisheimer v. Ascent Real Estate Management Corporation*, 2013 BCPC 0266, in which the court came to the same conclusion on similar facts about the vacation pay entitlement. I dismiss the applicant’s claims.
16. In accordance with the Act and the tribunal’s rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

**ORDER**

17. I order the applicant's claims and this dispute dismissed.

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Shelley Lopez, Vice Chair