Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2017-005210

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tiernan v. Stanick,* 2018 BCCRT 920

B E T W E E N :

Richard Tiernan

APPLICANT

A N D :

Eric Stanick

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Richard Tiernan, bought a house on a large rural property (property) in 2016 from the respondent, Eric Stanick. The applicant says the respondent failed to disclose he had used the herbicide Grazon on the property's lawn and garden.

2. The applicant says it planted a garden and in June 2017 very little had grown. The applicant claims $3,000 for the removal and replacement of top soil to a depth of 14 inches, plus $2,000 to have the property's well water checked for contamination for "several years in future".

3. The respondent says he "spot sprayed" the east and west sides of the yard with Grazon in 2013, after a different herbicide Killex had failed to stop growth of weeds and in particular hawkweed. The respondent denies spraying the south and north sides of the house and that the area around the well was not sprayed.

4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. 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 "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. 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.

7. 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.

8. 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.

ISSUE

9. The issue in this dispute is whether the respondent was required to disclose the use of Grazon under the parties' property sale contract, and if so, what is the appropriate remedy for the respondent's failure to disclose its use.

EVIDENCE AND ANALYSIS

10. 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.

11. The respondent sold the property to the applicant in 2016. The applicant did not provide a copy of the contract of purchase and sale, but the respondent provided an excerpt of the "Terms and Condition" section at paragraph 3. One of the terms read:

> Subject to the Buyer, at the Buyer’s expense, receiving and being satisfied with a report from a qualified water technician concerning the quantity and quality of the water supplies on or before October 7, 2016.

12. The evidence before me is that the applicant buyer did not get that water inspection done before completing the purchase. Instead, he did it in January 2018, after his garden was not growing well.

13. It is undisputed the respondent used Grazon on the property, sometime around 2013. I accept the respondent did so on advice from someone at the Cariboo Regional District, after use of Killex had not controlled the weeds. This is consistent with a written statement in evidence from the respondent’s grandfather, who had applied the Grazon.

14. I also accept the respondent’s submission that the Grazon was only “spot sprayed”, and only on the east and west sides of the house, away from the well. This is consistent with the respondent’s grandfather’s statement and with the applicant’s submission that soil sample testing “did not appear to have evidence” of Grazon. I reject the applicant’s speculative submission that ongoing water testing should be done because the herbicide had not yet leached into the water table. The Grazon use was in 2013 and the testing was done in January 2018. The applicant has not provided any evidence to suggest that it would take more than 4 years to reach the well. The applicant’s photos of the “tested” areas, while under snow, are not helpful. That said, given my conclusion below that the respondent had no obligation to disclose past Grazon use, nothing turns on the applicant’s photos.

15. The respondent says he was never asked about exactly how much Grazon was used. The respondent says he did not empty the 1 bottle that was purchased, “not even close”. The respondent says a small amount was used from that one bottle on a single application. The respondent denies saturating the property with Grazon. I accept the respondent’s evidence, which I find is not particularly disputed.

16. The applicant submits he and the respondent “had a discussion about part of the yard where herbicides had been used”. However, the applicant says he was not told “of the total area [sic] which herbicides had been used”. I find this suggests the onus was on the applicant to make the necessary inquiries to satisfy himself.

17. The applicant says it is the seller’s responsibility to ensure that full disclosure of all areas “which have been deemed unfit for the purpose land was purchased for”. The applicant says he stated several times that he planned to grow a vegetable garden and flowers. The respondent denies this discussion. The applicant says if he had been told about the total use of herbicides “we probably would not have purchased the property”. As noted above, I find the applicant has not proved the well area was sprayed. As for the garden, I find the applicant has also not proved it was sprayed, but even if it was, the respondent had no obligation to disclose that fact. Even if the respondent used Grazon contrary to its label instructions, that does not mean the respondent owed a duty to disclose Grazon use to the applicant buyer.

18. The applicant provided excerpts from a blank Property Disclosure Statement (PDS) instruction sheet, and a printed instruction about the Real Estate Council of BC’s Rule 5-13 and required disclosure of “any material latent defect”. Rule 5-13 states that a material latent defect is one that cannot be discerned through a reasonable inspection of the property, including any defect that renders the property a) dangerous or potentially dangerous to its occupants, and b) unfit for habitation.

19. The difficulty for the applicant is that he has not proved the respondent’s single use of Grazon in 2013, by spot spraying, amounts to a material latent defect. The applicant has not proved the respondent failed to comply with Rule 5-13 or that the respondent was required to disclose historical use of Grazon. I say this because there is no evidence that the spot spraying of Grazon in 2013 is dangerous or potentially dangerous to the applicant, which is not seriously disputed. The applicant’s focus is on “unfit for habitation”, but I find that phrase refers to the occupant’s ability to live safely on the property. The fact that the applicant may have had challenges growing a vegetable garden, even if it were proved that Grazon

caused those problems, does not make the property "unfit for habitation". My conclusion is consistent with the respondent's realtor's statement in evidence, which is that it is not common practice for a realtor to ask a seller to declare what lawn care or weed control products they use on their lawns. My conclusion that the respondent had no obligation to disclose the 2013 Grazon use is also consistent with the fact that the applicant buyer expressly chose to have a subject clause in the contract to allow him to obtain water testing before completion, and he chose not to do that.

20. Given my conclusions above, I find the applicant's claims must be dismissed. As the applicant was not successful, in accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees. There were no dispute-related expenses claimed.

ORDER

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

Shelley Lopez, Vice Chair