



Civil Resolution Tribunal

Date Issued: February 6, 2019

File: SC-2018-003277

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *OKANAGAN CHOICE REALTY LTD. v. Tapp*, 2019 BCCRT 145

B E T W E E N :

OKANAGAN CHOICE REALTY LTD.

APPLICANT

A N D :

Brian Tapp

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for real estate marketing services.
2. The applicant, OKANAGAN CHOICE REALTY LTD., says the respondent, Brian Tapp, entered into a contract with the applicant to list his property for sale, including

a listing on the “reator.ca” website. The applicant says the contract required the respondent to pay for marketing services, but the respondent has refused to pay. The applicant seeks payment of \$1,050.

3. The respondent admits to signing the contract, but says he was unaware that it allowed for reimbursement of marketing expenses, and he would not have signed it if he had known. He also says his realtor’s services were unprofessional.
4. For the reasons set out below, I find the respondent must pay the applicant \$1,050 for real estate marketing fees.
5. The applicant is self-represented. The respondent is represented by Sam Morgan, a real estate broker.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
7. 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.

8. 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.
9. 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.

ISSUES

10. The issue in this dispute is whether the respondent must pay the applicant \$1,050 for real estate marketing services.

EVIDENCE AND ANALYSIS

11. 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 arguments to the extent necessary to explain my decision.
12. On April 12, 2017, the parties entered into an agreement for the applicant to list the respondent's townhouse for sale. The respondent and Mr. Morgan, on behalf of the applicant, signed 2 separate contracts.
13. The first contract is a multiple listing contract, which gives the applicant brokerage an exclusive listing on the property's sale from April 12, 2017 to April 12, 2018. That contract says Mr. Morgan was the seller's sole agent in respect of the property, and sets out the commissions to be paid if the property was sold.
14. The second contract signed by Mr. Morgan and the respondent is entitled "marketing agreement". Schedule A of the marketing agreement sets out the specific services that the applicant will provide, including responding to inquiries, showing the property to prospective buyers, and marketing the property through the local real estate board's Multiple Listing Service.

15. The marketing agreement says the fee for these services was \$1,900 plus GST, to be paid when the property was sold. Paragraph 2 of the marketing agreement says the parties understand that the fees set out in schedule A are payable to the applicant regardless of whether the property sells or not. This information is repeated in schedule A, which says that if the listing was cancelled, or after 360 days from the listing date, the respondent was required to pay \$1,000 plus taxes whether or not the property was sold.
16. The applicant says it fulfilled its obligations under the marketing agreement, and 360 days passed without a sale, so the respondent must pay \$1,000 plus \$50 GST.
17. I agree. The respondent says he did not see the information about paying a \$1,000 fee regardless of sale. He says Mr. Morgan failed to mention it to him, which Mr. Morgan denies. However, the information about the fee regardless of sale is clearly written in 2 places on the contract, both of which were signed separately by the respondent. By signing these documents, the respondent agreed to pay the fee.
18. The respondent says Mr. Morgan was unprofessional. The email correspondence between the parties shows that their relationship broke down in December 2017, when Mr. Morgan recommended that the respondent drop his asking price, and the respondent replied that the failure to sell was due to Mr. Morgan's lack of advertising and effort.
19. The respondent filed a complaint with the local real estate board, in which he alleged that Mr. Morgan was unprofessional because he refused to contact the respondent's tenant in order to show the property while the respondent was out of the country, so potential showings were missed. I find that this is not determinative, because there is nothing in the contracts between the parties that requires Mr. Morgan to deal with the respondent's tenant, or with anyone other than the respondent, prospective buyers, and other agents. Also, in emails to Mr. Morgan the respondent said E was not a tenant, but his partner. Mr. Morgan asked for the respondent's consent to discuss the property with E, and the respondent did not provide it.

20. I find nothing in the documents provided in evidence to establish unprofessional conduct by Mr. Morgan, and nothing that would constitute a breach of the marketing agreement by the applicant. Based on the listing information provided by the applicant, I find it provided the marketing services required under the marketing agreement.
21. For these reasons, I find the respondent must pay the \$1,000 marketing fee plus GST, for a total of \$1,050. The applicant is also entitled to pre-judgment interest on the \$1,000, under the *Court Order Interest Act* (COIA), from April 8, 2018.
22. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.
23. Mr. Morgan submits that the respondent should pay additional “fines and penalties” for wasting the applicant’s time and the tribunal’s time. The tribunal rules do not provide for such penalties, and I find the breach of contract in this case is not so extraordinary that it justifies an award of punitive damages. I therefore dismiss this claim.

ORDERS

24. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$1,186.92, broken down as follows:
 - a. \$1,050 for marketing fees and GST,
 - b. \$11.92 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees and dispute-related expenses.
25. The applicant is entitled to post-judgment interest, as applicable.

26. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
27. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member