



Civil Resolution Tribunal

Date Issued: March 13, 2019

File: SC-2018-004971

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fraser v. Cultus Lake Village Inc.*, 2019 BCCRT 305

B E T W E E N :

Heather Fraser

APPLICANT

A N D :

Cultus Lake Village Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Heather Fraser, owned a manufactured home that was located at a manufactured home park owned by the respondent, Cultus Lake Village Inc. From 2012 to 2017, the applicant had a tenant who was supposed to pay for the pad rental for the applicant's site, but fell into arrears. When the applicant sold the manufactured home in July 2017, the respondent told the purchaser to pay \$3,472

in pad rental arrears (arrears) directly to the respondent. The applicant says that the applicant was not responsible for the arrears and claims \$3,472.

2. The respondent says that the applicant agreed to pay the arrears in exchange for the respondent's help selling the manufactured home.
3. The applicant is self-represented. The respondent is represented by an employee.

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 118 of the *Civil Resolution Tribunal 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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.
8. Although this disputes relates to pad rental of a manufactured home, I find that the *Manufactured Home Park Tenancy Act* does not apply to this dispute.

ISSUES

9. The issue in this dispute is whether the parties verbally agreed that the respondent could receive the arrears directly from the purchaser of the manufactured home.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. The applicant entered into a contract of purchase and sale for the manufactured home on October 1, 2012. The applicant describes this contract as a "rent to own" contract. The purchaser (first purchaser) took possession of the manufactured home immediately and agreed to pay \$300 per month for 72 months. After 72 months, the applicant would transfer legal ownership of the manufactured home as long as the first purchaser had made the required payments.

12. The contract said that the first purchaser was responsible for paying the pad rent directly to the respondent. The contract also said that if the first purchaser failed to pay an instalment of the purchase price or the pad rental, the applicant could evict them.
13. The applicant says that the first purchaser and the respondent entered into a tenancy agreement once the first purchaser took possession of the manufactured home. The applicant says that the first purchaser was responsible for paying the pad rent, not her.
14. The applicant provided a copy of what she says is the respondent's standard tenancy agreement, because she does not have a copy of the tenancy agreement between the first purchaser and the respondent. The respondent admits that it had a tenancy agreement with the first purchaser. The respondent points out that the tenancy agreement that the applicant provided is not the one that the first purchaser signed but does not say that the first purchaser's tenancy agreement has different terms. In addition, the respondent did not provide a copy of its tenancy agreement with the first purchaser, despite having the opportunity to do so.
15. On balance, I am satisfied that the respondent and the first purchaser had a tenancy agreement that included a term that made the first purchaser responsible for paying the pad rent, not the applicant.
16. It is undisputed that by May 2017, the first purchaser had accumulated 8 months of arrears in pad rent, which totaled \$3,472. The applicant says that the respondent did not tell her about the accumulated arrears until May 2017.
17. In May 2017, the applicant evicted the first purchaser. The applicant retained ownership of the manufactured home and put it up for sale again, with the help of the manager of the respondent as a "middle man". The manager's main role was facilitating the exchange of money from the new purchaser to the applicant.
18. On June 14, 2017, the applicant entered into a contract to sell the manufactured home to a new purchaser (new purchaser). This was not a "rent to own"

arrangement. The new purchaser agreed to pay \$33,000 for the manufactured home. The new purchaser paid a \$1,000 deposit, which was held in trust by the respondent.

19. The purchase completed on July 21, 2017. The new purchaser paid a further \$28,528 to the respondent in trust for the applicant. The new purchaser paid the arrears of \$3,472 directly to the respondent as the remainder of the purchase price. The respondent provided the applicant with a bank draft for \$29,528.
20. As stated above, the respondent does not dispute that the first purchaser accumulated the arrears by failing to pay the respondent under their tenancy agreement. I find that it was the first purchaser, not the applicant, who owed the respondent the arrears.
21. However, the respondent says that the parties had a verbal agreement that in exchange for the respondent acting as the “middle man”, the applicant would pay the arrears with the proceeds of sale.
22. The respondent says that it only agreed to help the applicant for free so that it could get the arrears paid. The respondent says that when there are lawyers and notaries involved in a sale, pad rental arrears always come out of the sale proceeds.
23. The applicant denies any verbal agreement. She says that she never consented to the respondent withholding the arrears.
24. A contract does not need to be written or signed, but when a contract is written and signed, it creates certainty about its terms and the parties’ intentions. When there is no written contract, the party trying to prove that a verbal contract exists must prove that the parties agreed on the essential terms of the agreement.
25. In this dispute, there is no objective evidence, such as written correspondence, to support or undermine either party’s version of events. It is impossible to know with certainty what the parties said to one another when the respondent agreed to help the applicant sell the manufactured home. Therefore, I must assess the credibility of

each party's version of events. For the reasons that follow, I find that the applicant's version of events is more credible.

26. First, the respondent says that the applicant admits in her submissions that there was a verbal agreement to pay off the arrears. I have reviewed the portion of the applicant's submissions that the respondent says is an admission. I find that there is no reasonable interpretation of her words that she admitted that she agreed to pay the arrears. On the contrary, the applicant's submissions are consistent and adamant that she never agreed to such an arrangement and that she was upset that she did not get the full purchase price. The respondent also asserted that the applicant sought to rely on "false evidence" by providing a copy of a standard tenancy agreement, even though the applicant did not claim that she was submitting the actual tenancy agreement that the first purchaser signed. I find that these overly forceful submissions reflect poorly on the respondent's credibility.
27. Second, the respondent says that it only agreed to help the applicant so that it could collect the arrears. However, the respondent also says that it used to regularly help people sell their manufactured homes because they generally could not afford realtors. I find that this contradiction suggests that at the time the respondent agreed to help the applicant, it did not require the applicant to repay the arrears as a condition of its assistance because the respondent regularly provided the same service to others without the expectation of payment or reward. In addition, the fact that other sellers in the sales of manufactured homes generally pay arrears out of the sale proceeds does not mean that the applicant agreed to the same arrangement.
28. Third, and most importantly, as part of assessing credibility I must determine which version of events is more consistent with common human experience. I find that it is unlikely that the applicant would have agreed to the alleged verbal agreement. I find that she knew that she had no legal obligation to pay the arrears. Therefore, I find that she did not have a sufficient incentive to pay the substantial arrears of over 10% of the purchase price for the limited "middle man" assistance from the

respondent. In other words, I find that the services that the respondent provided are out of proportion to the amount of the arrears.

29. Therefore, I find that the respondent's allegation that the parties agreed that the respondent would withhold the first purchaser's arrears is not supported by sufficient credible evidence.
30. I find that the respondent must repay the applicant the \$3,472 in arrears.
31. 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 order the respondent to reimburse the applicant her tribunal fees of \$125.

ORDERS

32. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,682.52, broken down as follows:
 - a. \$3,472 as reimbursement for the arrears
 - b. \$85.52 in pre-judgment interest under the *Court Order Interest Act* calculated from the day that the purchase completed, and
 - c. \$125 for tribunal fees.
33. The applicant is entitled to post-judgment interest, as applicable.
34. 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.

35. 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.

Eric Regehr, Tribunal Member