



Civil Resolution Tribunal

Date Issued: March 22, 2019

File: SC-2018-005812

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gulliford v. Rast*, 2019 BCCRT 363

B E T W E E N :

Tyler Gulliford

APPLICANT

A N D :

Erich Rast

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Tyler Gulliford, bought a house from the respondent, Erich Rast. The respondent did not provide vacant possession of the house by the time and date agreed upon. The applicant wants the respondent to pay him \$2,500 for expenses he incurred as a result of the respondent's breach of their agreement.

2. The respondent says he was taken to hospital by ambulance the night before the possession date and was not discharged until the next day, which is why he breached the parties' agreement. The respondent says the applicant did not incur the expenses he is claiming.
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 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. 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, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondent is required to pay the applicant \$2,500 for failing to provide vacant possession of the house by the time and date agreed upon.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. It is undisputed that the respondent agreed to sell his house to the applicant through a written contract of purchase and sale (contract). The contract states that the respondent would give the applicant vacant possession of the house at 12:01 p.m. on July 31, 2018. The respondent says he fell unconscious on the evening of July 30, 2018 and was taken to hospital by ambulance. He says he was not discharged until the next day, which is why he was late in vacating the house. Although the parties dispute much of what happened that day, it is undisputed that the respondent breached the contract by failing to provide vacant possession of the house by 12:01 p.m. on July 31, 2018. The question I must determine is the extent of the applicant's damages, if any.
12. The applicant says he incurred \$2,500 in damages because of the respondent's breach of contract. He says he had arrangements with several different contractors to meet at the house on the afternoon of July 31, 2018, including some from out of town, which he had to cancel. He says that because of these cancellations he was "bumped back," which I take to mean the work the contractors were hired to perform was rescheduled to a later date. The applicant says one local contractor did walk

through the house on the possession date, but they had difficulty providing an estimate because the respondent's personal belongings were still in the house. However, the applicant provided no statements, receipts, correspondence, or any other evidence from any contractors to support any of these claims, even though I expect such evidence would be easily obtainable. The respondent submitted a statement from his realtor stating that the applicant's contractors had full access to the house on July 31, 2018.

13. The applicant says his wife operates a daycare out of their home, and that he needed vacant possession of the house on July 31, 2018 to set up the daycare in the house. However, the applicant submitted no evidence to support this claim.
14. The applicant says he hired movers on July 31, 2018 which had to be delayed, but again he provided no contract, receipt, correspondence, or any other evidence to support this claim, even though I would expect such evidence to be readily available. The respondent says the applicant did not move into the house for several months after the possession date.
15. The applicant has the burden of proving his claims and I find he has not done so. While the applicant has established that the respondent breached the contract, I find he has not submitted any evidence to establish that he incurred any damages from the respondent's breach. I dismiss this claim.
16. The applicant also claims that on July 31, 2018 the house was not in the same condition it was in when he viewed it on May 3, 2018, as required by the contract. However, he did not explain what conditions were different. The applicant submitted several photographs of the house he claims to have taken at 12:37 p.m. on July 31, 2018. The photographs show personal belongings and a dog on the floor in at least 1 room of the house, and cleaning supplies in the kitchen. However, there is no evidence about the condition of the house on May 3, 2018. I dismiss this claim.

17. Under section 49 of the Act, and tribunal rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of his tribunal fees. He has not claimed any dispute-related expenses.

ORDER

18. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member