



Civil Resolution Tribunal

Date Issued: March 25, 2019

File: SC-2018-004384

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *RUTLEDGE v. LANE et al*, 2019 BCCRT 369

B E T W E E N :

FAITH RUTLEDGE

APPLICANT

A N D :

DOUG LANE, PROPERTY GUYS, and MY MOVE REALTY BC LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Faith Rutledge says she agreed to have the respondents Doug Lane and Property Guys provide listing services, including having her property listed on the Multiple Listing Service (MLS), but that she would show the property herself. Ms. Rutledge paid Mr. Lane \$3,189.90 for the advertising service.

2. After signing an Advertising Agreement, Ms. Rutledge says Mr. Lane and Property Guys required her to sign a further contract with the respondent My Move Realty BC Ltd, (My Move) containing clauses she found unacceptable. When My Move refused to remove the clauses, Ms. Rutledge cancelled the Advertising Agreement and requested a full refund. The applicant seeks a refund of the \$3,189.90 paid to Mr. Lane and Property Guys.
3. Mr. Lane says the dispute is with Realtor.ca, which is not a party to this dispute, rather than him or Property Guys. He asks that the dispute be dismissed.
4. My Move says it was paid \$799 plus GST of the total \$3,189.90 collected from PropertyGuys.com. My Move Realty says it already offered to refund Ms. Rutledge the \$799 portion of the fee.
5. The applicant is self-represented. The respondent Doug Lane is self-represented. Mr. Lane operates the franchise PropertyGuys.com Kelowna. The respondent Property Guys did not file a Dispute Response, but Mr. Lane provided a defence for it in his Dispute Response. The respondent My Move Realty BC Ltd. is represented by principal or employee Ravi Duhra.
6. Mr. Lane brought a counterclaim, but it was not accepted by the tribunal due to a jurisdiction issue. The counterclaim was withdrawn and so the style of cause does not reflect it.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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 decided to hear this dispute through written submissions.
10. 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.
11. 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.

ISSUE

12. The issue in this dispute is whether Mr. Lane, Property Guys or My Move breached their agreements with Ms. Rutledge such that they must refund any of the \$3,189.90 she paid for services.

EVIDENCE AND ANALYSIS

13. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions, but only refer to them as necessary to explain my decision.
14. On March 8, 2018, Ms. Rutledge entered into an Advertising Agreement with Mr. Lane and Property Guys to list and market her home.
15. The Advertising Agreement provides that Ms. Rutledge agrees to pay \$3,189.90 for a package involving "Real Estate Pro" and "Kijiji". Real Estate Pro makes up \$2,999 of the fee. It is uncontested, and I find, that part of this service was to market the property on PropertyGuys.com and Realtor.ca (the website for the MLS).

16. The Advertising Agreement says the listing being purchased is for a six-month period.
17. The Advertising Agreement can be terminated by the customer on 7 days' notice if the property has sold, the customer decides to list with a real estate agent who is not affiliated with Property Guys, or if the customer wishes to remove the listing. In such a case, the customer agrees there will be no reimbursement of funds.
18. The Advertising Agreement states that there are no refunds, due to the nature of the services being delivered.
19. As well, the Advertising Agreement provides that Property Guys is not responsible for and does not warranty the work or services of the third-party service providers who delivery some elements of their program, nor are they responsible for any failure of the Listing as a result of an act or omission of the customer.
20. The applicant paid Property Guys \$3,325.35 on March 20, 2018. An adjustment of \$129.00 was made on March 21, 2019 to remove the Facebook portion of the service.
21. In exchange, Mr. Lane agreed to provide
 - a. an appraisal, which was completed through a third party provider,
 - b. interior and exterior photography, measurements and information gathering about the property which I find was completed March 20, 2018,
 - c. creation of a listing on PropertyGuys.com, which was published on March 22, 2018,
 - d. a professional answering service starting March 22, 2018 and ending May 14, 2018;
22. With respect to gathering information and creating a listing, I find that Mr. Lane and Property Guys completed this task to Ms. Rutledge's satisfaction, based on her March 22, 2018, email saying Mr. Lane had done a "wonderful job" preparing the listing.
23. A central issue is that the Real Estate Pro service typically includes putting the prepared listing on MLS. In this instance, Mr. Lane put Ms. Rutledge in touch with My Move to act as her broker, because only brokers or agents can apply for or put a listing onto MLS/Realtor.ca.

24. On March 8, 2018, Ms. Rutledge signed a “Mere Posting Checklist” document with My Move. This was an agreement to have My Move act as broker to place the MLS listing on Realtor.ca, provided Ms. Rutledge signed the required documents and provided the required information to be permitted to have a listing placed on MLS.
25. My Move then provided a Listing Customer Service Agreement it wanted Ms. Rutledge to sign. She refused to do so, because she had concerns about several clauses as follows:
 - a. A clause indicating that MyMoveRealty, as listing brokerage, might receive a finder’s fee,
 - b. A clause providing for MyMoveRealty to enter into buyer representation agreements with buyers who might be interested in purchasing the property,
 - c. An assignment of remuneration clause,
 - d. A clause about personal information collected and used for the listing, including a provision that it might become part of a database of the MLS system that could be licensed or sold.
26. On April 2, 2018 Mr. Duhra replied to the applicant’s questions about these clauses.
27. The applicant was not satisfied with the clauses and declined to sign the Listing Customer Service Agreement.
28. On April 6, 2018, the applicant emailed Mr. Lane and indicated that because her sole reason for signing with Property Guys was to get MLS exposure, she would be cancelling her agreement and requesting a refund.
29. On April 7, 2018, Mr. Duhra said he would personally guarantee that neither he nor My Move would accept a finder’s fee, participate in multiple representation, charge the applicant any more money than what was outlined in the Service Options part of the Listing Contract, or disclose her personal information except as needed to place her listing on the MLS.
30. By April 8, 2018 the listing prepared by Mr. Lane and published on PropertyGuys.com and Kijiji had generated 99 views.
31. On April 11, 2018, Mr. Lane wrote to Ms. Rutledge indicating that the services promised by Property Guys had been completed. The list includes creating the Realtor.ca listing and submitting and paying for her application with My Move to host the pending Realtor.ca listing.

32. On May 14, 2018, Mr. Lane cancelled Ms. Rutledge's listing with PropertyGuys.com as she had requested. At that point, the property had been on the market for 53 days and had 203 views through the listing prepared by Mr. Lane.
33. On July 30, 2018, the applicant emailed Mr. Lane and asked to discuss the cancellation of her contract with him and Property Guys.
34. On July 30, 2018, Mr. Duhra offered the applicant a refund of \$799 plus GST that she had paid Property Guys, which had been provided to My Move. Ms. Rutledge declined. This offer was withdrawn given the dispute advanced.
35. Mr. Lane says he provided all of the services that were required under the Advertising Agreement with Ms. Rutledge.
36. The only aspect of the agreement he could not fulfil was to publish the Realtor.ca listing. He was unable to do this because the applicant declined to sign an agreement in the form required by My Move at the time.
37. When the applicant requested a refund, Mr. Lane declined because all of his obligations had been fulfilled. The Advertising Agreement contains a clause reading "NO REFUNDS – Due to the nature of the service we deliver we are unable to refund any part of your purchase – including those fees to paid to third party service providers on your behalf."
38. Based on the evidence, I find that Mr. Lane and Property Guys fulfilled their obligations under the Advertising Agreement. The only thing they had promised but did not provide was to have the listing placed on Realtor.ca. The listing was created and submitted through My Move but was then not uploaded to MLS because Ms. Rutledge would not agree to My Move's terms.
39. I find that Mr. Lane and Property Guys substantially fulfilled their contractual obligations to Ms. Rutledge. They could not get the listing placed on Realtor.ca because of Ms. Rutledge's action in declining to sign the My Move agreement. In the circumstances, where the listing had already been prepared and published on two other platforms and given the no refunds clause in the Advertising Agreement, I find that Ms. Rutledge is not entitled to a refund from Mr. Lane, Property Guys or My Move.
40. I find she is not entitled to a refund for the portion of the fee paid to Property Guys that was passed along to My Move, since the only reason she could not fully benefit from their services was that she refused to sign the Listing Customer Service Agreement was her own disagreement with some of the clauses. She also declined

to continue with that process even after My Move wrote to her saying it would not enforce the clauses she was concerned about.

41. In making these findings, I am alive to the fact that the listing, once prepared and published, was generating interest in Ms. Rutledge's property and was available to her.
42. 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. The applicant was not successful and so is not entitled to reimbursement for tribunal fees or dispute-related expenses.

ORDER

43. I dismiss the applicant's claims and the dispute.

Julie K. Gibson, Tribunal Member