



Civil Resolution Tribunal

Date Issued: March 29, 2019

File: SC-2018-005975

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perret v. City of Vancouver*, 2019 BCCRT 396

BETWEEN:

Merrilee Perret

APPLICANT

AND:

City of Vancouver

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Merrilee Perret, owns property in the jurisdiction of the respondent City of Vancouver. She says the respondent violated section 13(b) of the BC *Land Tax Deferment Act* (LTDA) and was negligent, by failing to forward her land tax deferment application (Deferment Application) to the BC Ministry of Finance (Ministry). The applicant seeks various remedies, which are addressed below.
2. The respondent denies the applicant's claims. It says the applicant failed to pay her 2017 property taxes or submit the Application by the July 5, 2017 deadline, so the respondent lawfully imposed a 5% late penalty for unpaid taxes on the applicant under the municipal tax penalty bylaw. The respondent says that when an unpaid penalty is owed, a Deferment Application is not considered "properly completed" and is therefore not submitted to the Ministry. The respondent also says the applicant suffered no damages, as the respondent submitted the Application to the Ministry 3 days after the applicant paid the outstanding penalty, the Ministry approved it and deferred the applicant's 2017 property taxes.
3. The applicant is represented by her son. The respondent is represented by an employee, Iain Dixon, who is a lawyer.

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* (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 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.
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 applicant is entitled to damages arising from the respondent's failure to forward her Deferment Application to the Ministry within 30 days of receiving it.

EVIDENCE AND ANALYSIS

9. 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.
10. Initially, the applicant claimed a refund of the \$607.69 municipal tax penalty as a remedy in this dispute. However, in a final submission to the tribunal, the applicant

dropped that claim and agreed with the respondent that the tribunal had no jurisdiction to reverse the penalty. For that reason, I do not address the validity of the property tax penalty this decision.

11. The applicant now submits that the respondent's failure to forward her Deferment Application to the Ministry within 30 days of receiving it was negligent, and she seeks \$625 in compensatory damages. She also says this action by the respondent breached section 13(b) of the LTDA, and was *ultra vires* or an overreach of the municipality's authority.
12. Having reviewed all of the evidence and submissions before me, I find the applicant has not established her entitlement to damages, regardless of the respondent's actions. For that reason, it is not necessary for me to determine whether the respondent was negligent, or in breach of the LTDA.

Economic Loss

13. The respondent says it submitted the applicant's Deferment Application 3 days after she paid the outstanding penalty in December 2017, and the Ministry approved it and granted the 2017 property tax deferment. It says the applicant therefore did not pay any 2017 property taxes or incur related economic loss, so is not entitled to damages.
14. The applicant did not dispute this assertion that the Ministry approved the deferment. She provided no evidence that she incurred costs such as interest related to the respondent's action. For that reason, I find the applicant is not entitled to pecuniary (economic) damages on this basis.

Damages for Emotional Distress

15. The applicant says she could not afford to pay her property taxes without incurring financial distress. She says that because she could not pay, and because the respondent refused to submit her Deferment Application to the Ministry, she experienced inordinate "emotional duress" and stress-related physical symptoms

such as headaches and insomnia. She seeks \$625 in compensation for this emotional duress, and for 5 counselling sessions she attended “to seek help for how to navigate and deal with this financial crisis”.

16. I find the applicant, who bears the burden of proof, has not proven this claim. While she provided receipts for 3 counselling sessions, as well as a receipt for a “release and relax workshop”, there is no evidence about when these sessions occurred. Also, there is no evidence, such as report from the counsellor, to confirm that these sessions related to the Deferment Application, as opposed to other stressors.
17. Also, there is no opinion before me from any health professional to confirm the applicant’s reported physical and psychological symptoms, and to link the cause of those symptoms to the Deferment Application. I accept that this financial issue was frustrating and stressful for the applicant. However, without any supporting expert evidence to confirm her symptoms, their treatment, and their cause, I find the applicant has not established a claim to non-pecuniary damages for emotional distress, or pecuniary damages for counselling costs. The evidence here does not rise to the level where it is compensable in the absence of proof of psychological injury: see for example *Talbot v. Gill dba Lloyd’s Drycleaners*, 2019 BCCRT 366, at para. 28.

Tribunal Fees and Legal Fees

18. 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. The applicant was not successful, so I do not order reimbursement of tribunal fees. The respondent did not claim tribunal fees or dispute-related expenses.
19. The applicant claims \$1,000 in legal fees, as compensation for her son’s time spent acting as her representative. I do not order reimbursement of legal fees, for 2 reasons. First, the applicant was not successful in this dispute. Second, tribunal rule 132 says that except in extraordinary cases, the tribunal will not order payment of

legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I see no reason to depart from this general rule in this case, which is not extraordinary, and therefore I do not order reimbursement of legal fees.

ORDER

20. I dismiss the applicant's claims, and this dispute.

Kate Campbell, Tribunal Member