



Civil Resolution Tribunal

Date of Original Decision: September 17, 2019
Date of Amended Decision: September 18, 2019

File: SC-2019-003006

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hoy v. Solomon*, 2019 BCCRT 1095

B E T W E E N :

COREY HOY

APPLICANT

A N D :

EVAN SOLOMON

RESPONDENT

A N D :

COREY HOY

RESPONDENT BY COUNTERCLAIM

AMENDED REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Corey Hoy says he had an agreement with the respondent Evan Solomon allowing Mr. Solomon to live at a house for a period while attempting to finalize financing to complete the purchase of it. However, Mr. Hoy says Mr. Solomon moved out, leaving the house damaged, without closing on the purchase. Mr. Hoy claims \$3,937.52 for repairs, cleaning, an unpaid water bill and lost wages. Mr. Solomon denies causing the damage.
2. In his counterclaim, Mr. Solomon says he was wrongfully evicted one month prior to the end of the agreed period of possession in the contract of purchase and sale. As well, Mr. Solomon says that Mr. Hoy agreed to apply \$5,000 toward his purchase of the home but failed to do so. Mr. Solomon claims \$5,000, which he describes as “half of all rent paid.”
3. Mr. Hoy says Mr. Solomon breached the contract, so he exercised his right to terminate the contract. Mr. Hoy says no money is owed to Mr. Solomon.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. 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.

7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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.
9. There is a question about whether the parties' agreement includes or is a tenancy agreement under the *Residential Tenancy Act* (RTA), in which case the tribunal must refuse to resolve it, under section 10 of the CRTA. More on this below.

ISSUES

10. The issues in this dispute are:
 - a. Whether the agreement between the parties includes a tenancy agreement under the RTA, in which case the tribunal must refuse to resolve the dispute arising from it?
 - b. If not, to what extent Mr. Solomon must pay for damage done to the house while he lived in it?
 - c. On the counterclaim, whether Mr. Solomon is entitled to a refund of $\frac{1}{2}$ the rent he says he paid, up to a \$5,000 limit.

EVIDENCE AND ANALYSIS

11. For his claim, Mr. Hoy bears the burden of proof on a balance of probabilities. Mr. Solomon bears this same burden in his counterclaim. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
12. On October 6, 2018, the parties entered a Contract of Sale and Purchase, including a Pre-Possession clause, (contract) for a house.
13. The contract says:
 - a. That Mr. Solomon is delayed in completing the house purchase due to an estimated 6 month delay in his financing approval, so that the parties agree that he will possess the premises prior to closing.
 - b. Mr. Solomon was entitled to possession as of November 1, 2018.
 - c. The closing date was May 1, 2019, or August 1, 2019 if Mr. Solomon extended the closing period under section 8.
 - d. Mr. Solomon had a right of possession pending the closing, as distinct from an agreement intended to establish “an ongoing indefinite Landlord-Tenant relationship”.
 - e. Mr. Solomon agreed to pay \$1,900 per month, on the first of each month, starting November 1, 2018 and ending either on the closing date or when he vacated the house. The agreement does not refer to these payments as rent.
 - f. Of these monthly amounts, any “excess prepaid sums” would be refunded at closing or when Mr. Solomon vacated the house. I find that this means if amounts were paid in advance, but Mr. Solomon vacated the house prior to the month to which the payment applied, he would be refunded those “prepaid” amounts.

- g. If Mr. Solomon completed the purchase, he would be refunded $\frac{1}{2}$ of all monthly \$1,900 amounts paid, up to a maximum of \$5,000.
 - h. Mr. Solomon was responsible for all utilities, including water, as of the possession date until closing or return of possession to Mr. Hoy
 - i. Mr. Solomon agreed to pay a separate \$5,000 deposit to Mr. Hoy's solicitors, which would be credited to the purchase price upon closing or retained by Mr. Hoy as "reasonable additional consideration" if there was no closing.
 - j. If Mr. Solomon breached the contract, Mr. Hoy was permitted to provide written notice to him to vacate the house, and Mr. Solomon would "immediately vacate" and return sole possession of the house to Mr. Hoy.
 - k. If Mr. Solomon vacated the house without completing its purchase, he would return the house in "substantially the same condition" in which Mr. Hoy delivered it to him.
 - l. Mr. Solomon would be liable for any damages or repairs during his occupancy of the home, except for reasonable wear and tear.
14. Mr. Solomon and his family moved in to the house in late October 2018.
15. Mr. Solomon paid the \$1,900 for November 2018.
16. On December 2, 2018, Mr. Solomon paid the \$1,900 for December. I find that this payment was paid one day late.
17. I find that Mr. Solomon also failed to make the \$1,900 payment for January 2019 on time.
18. On January 4, 2019, Mr. Hoy served Mr. Solomon with a Notice to Vacate. Mr. Solomon said he would make his January payment prior to January 11, 2019 or vacate the house on January 14, 2019.

19. On January 11, 2019, Mr. Solomon paid \$900 in cash. That evening, he paid a further \$900 by e-transfer. On January 12, 2019, he paid the final \$100 for the January payment.
20. Mr. Solomon failed to pay the water bill that was due for the home on February 15, 2019. Specifically, a cheque from someone named T.M., applied to the bill, bounced.
21. At that point, Mr. Hoy served Mr. Solomon with written notice informing him that he could either purchase the house before March 31, 2019 or vacate the house.
22. On March 31, 2019, Mr. Solomon vacated the house.
23. Mr. Hoy attended at the house that day and noticed a smell of stale cigarette smoke, gouging in the laminate flooring, holes and dings in the walls of the house, that the house was dirty in all areas and had garbage in the driveway including feces, sawdust and tree debris.
24. It was uncontested and I find that Mr. Solomon returned only 3 of the 5 house keys, so Mr. Hoy says he was forced have the house re-keyed.
25. Mr. Hoy and his wife spent several days cleaning the home in early April 2019. Mr. Hoy says his wife missed a callout shift that would have paid \$493.13, because she was cleaning the house.
26. The Hoys say they paid \$200 to have worth of debris removed from the house site.
27. On April 3, 2019 Mr. Hoy and Mr. Solomon traded texts. Mr. Solomon wrote that when he moved in, there were empty boxes, wood, old furniture and building materials in the garage and out buildings. Mr. Solomon wrote that he would not be tidying these things up, as they were there when he moved into the house.
28. Mr. Hoy itemized a tarp, a basketball hoop and bags of garbage lying on the driveway and in the bin at the side of the house, as items Mr. Solomon was obliged to remove.

29. Mr. Hoy also requested return of his garage door openers and mail keys.
30. I find the text messages and photos in evidence show that Mr. Solomon failed to remove his garbage from the house and surrounding property. I also find that the house required cleaning and some repairs that went beyond expected wear and tear for four months of occupancy.
31. Mr. Hoy submits that Mr. Solomon was evicted appropriately under the contract and that he must pay \$3,937.52 to repair and clean the house, and for some other damages.
32. Mr. Solomon says he was wrongfully evicted one month before he was to complete on buying the house. He says Mr. Hoy owes him half of all rent he paid, up to \$5,000.
33. The RTA applies to tenancy agreements, rental units and other residential property.
34. A tenancy agreement is defined under the RTA as an agreement between a landlord and a tenant about possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.
35. A “rental unit” is defined under the RTA as “living accommodation rented or intended to be rented to a tenant.”
36. “Rent” is defined as money paid or agreed to be paid by on or behalf of a tenant to a landlord in return or the right to possess a rental unit.
37. Section 5 of the RTA says that landlords and tenants may not avoid or contract out of the RTA or its regulations, and that any attempt to avoid or contract out of the RTA is “of no effect.”
38. The contract, at clause 14, says that the parties intended Mr. Solomon to have the right of possession pending the purchase of the house, as distinct from an agreement intended to establish “an ongoing indefinite Landlord-Tenant relationship”.

39. I find that the contract is not a residential tenancy agreement. I say this because:

- a. The home is being sold and purchased. It is not intended to be rented. That is, the home is not a rental unit as defined in the RTA.
- b. I find that the monthly payment is notⁱ made for the right to possess a rental unit. The monthly payment was being made to allow Mr. Solomon time to arrange his financing, pending the closing. Both parties understood that the monthly payment was in exchange for flexibility in the closing date.
- c. The agreement to refund ½ of those payments to Mr. Solomon at closing, up to \$5,000, is inconsistent with the definition of rent in the RTA.
- d. The parties contemplated an immediate change of possession if the purchase did not close, suggesting that they considered the monthly payments inextricably linked to the purchase and sale of the home.
- e. For these reasons, I find that the monthly payments are not rent and that the contract did not create a tenancy agreement between the parties.

40. Given my findings on jurisdiction, I will now proceed to decide the claim and counterclaim.

41. I have found that Mr. Solomon failed to pay the water bill and made monthly payments late in December and January. By doing so, I find that he breached the contract. Mr. Hoy was, therefore, entitled to have him vacate the house immediately upon written notice.

42. The contract specifies that Mr. Solomon is liable for any damage or repairs needed to the home beyond reasonable wear and tear.

43. Based on the photographs filed in evidence, I find that Mr. Solomon did damage to the house beyond what would be expected for his four-month residence there. Specifically, I find there was damage to:

- a. the fireplace floor,

- b. grease stains on the garage floor and front stair,
 - c. laminate flooring,
 - d. kitchen floor tiles, and
 - e. the house's front door, in the form of vertical and horizontal cracks on the lower part of the door.
44. I find that Mr. Hoy did not prove damage to the dishwasher rack, based on the photograph filed in evidence.
45. I find that the home was left in disrepair compared to its condition before Mr. Solomon lived there. I base this finding partly on the statement of PB, a friend of Mr. Hoy, who saw the home several times over a 12-year period and attested to the relatively poor condition of the house after Mr. Solomon left. I find that Mr. Solomon failed to return the house in substantially the same condition that Mr. Hoy delivered it to him in.
46. However, Mr. Hoy did not provide receipts, estimates or other documents proving the cost of some of the repairs.
47. Mr. Hoy claims
- a. \$787 for paint repair,
 - b. \$121.97 for paint supplies,
 - c. \$49.38 for dishwasher parts,
 - d. \$1,031.25 for "labor",
 - e. \$200 for garbage removal,
 - f. \$61.60 for an ozonator rental,
 - g. \$19.25 for grout cleaner,

- h. \$19.99 for grout sealer,
- i. \$95.76 for changing locks,
- j. \$450 for a cleaning contractor,
- k. \$446.19 for floor repairs,
- l. \$493.13 for lost wages,
- m. \$162.00 for the water bill that was unpaid.

48. I do not allow Ms. Hoy's lost wages for the call out shift, because she had an option to take the shift and complete cleaning at another time. As well, her earnings for a shift were not proven.

49. I find that Mr. Hoy has proven his damages for the water bill, floor repairs, garbage removal, some cleaning labour and some part of the repainting cost. I note that repainting and cleaning are also needed based on usual wear and tear, to an extent. Considering these items and estimating cleaning expenses and part of the painting expense, on a judgement basis, I award Mr. Hoy \$1,903.95, broken down as follows:

- a. \$500 for painting and supplies, being roughly half of the estimated painting costs,
- b. \$500 for cleaning labour costs,
- c. \$200 for garbage removal,
- d. \$95.76 for changing locks,
- e. \$446.19 for floor repairs,
- f. \$162.00 for the water bill that was unpaid.

50. Turning to the counterclaim, I find that Mr. Solomon is not entitled to a refund of $\frac{1}{2}$ of all his monthly payments up to \$5,000, because he failed to complete the sale.

Under the terms of the contract, I also find he is also not entitled to a refund of the non-refundable \$5,000 deposit he paid the Hoys, which was paid to ensure that the home would not be sold while he was arranging financing to complete the sale.

51. I dismiss Mr. Solomon's counterclaim.

52. The *Court Order Interest Act* applies to the tribunal. Mr. Hoy is entitled to pre-judgment interest on the \$1,903.95 from March 31, 2019 when Mr. Solomon moved out, to the date of this decision. This equals \$17.39.

53. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Because Mr. Hoy was successful, and Mr. Solomon's counterclaim was unsuccessful, I find Mr. Hoy is entitled to reimbursement of \$175 in tribunal fees. Mr. Hoy did not claim dispute-related expenses.

ORDERS

54. Within 30 days of the date of this order, I order Mr. Solomon to pay Mr. Hoy a total of \$2,096.34, broken down as follows:

- a. \$1,903.95 for repairs and damage, including the unpaid water bill,
- b. \$17.39 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 for tribunal fees.

55. Mr. Hoy is entitled to post-judgment interest, as applicable.

56. Under section 48 of the CRTA, 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.

57. Under section 58.1 of the CRTA, 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.

Julie K. Gibson, Tribunal Member

ⁱ Amendment Notes: An amendment was made to paragraph 39 to correct an inadvertent typographical omission, as allowed by section 64 of the CRTA.