



# Civil Resolution Tribunal

Date Issued: February 10, 2021

File: SC-2020-006878

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Copp v. Gustavson*, 2021 BCCRT 163

BETWEEN:

ANDREA COPP

**APPLICANT**

AND:

WENDY GUSTAVSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about a home purchase.
2. The applicant, Andrea Copp, helped her brother, NC, purchase a home in British Columbia (property). NC was living abroad at the time. It is undisputed that Ms. Copp intended to live in the property's lower suite after the purchase.
3. The respondent, Wendy Gustavson, acted as NC's real estate agent in his property purchase. Neither the sellers nor NC are parties to this dispute.
4. Ms. Copp says Ms. Gustavson failed to ensure that the sellers provided their tenant with a notice to end the tenancy. As a result, Ms. Copp says she was forced to pay the tenant \$5,000 to vacate the property so she could move in.
5. Ms. Copp says Ms. Gustavson was negligent and breached the contract between Ms. Gustavson and NC. She seeks \$5,000.
6. Ms. Gustavson says she owed no duty of care to Ms. Copp, and Ms. Copp has no standing to bring a claim on NC's behalf. Ms. Gustavson also says she is not responsible for the sellers' failure to fulfill their contractual obligation to deliver vacant possession. She says Ms. Copp's claims should be dismissed.
7. Both parties are self-represented. For the reasons that follow, I dismiss Ms. Copp's claims.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

9. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In this dispute, I find I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
10. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

12. The issue in this dispute is whether Ms. Gustavson is liable to Ms. Copp for failing to ensure that the sellers provided their tenant with a notice to end the tenancy, and if so, what remedy is appropriate.

## **EVIDENCE AND ANALYSIS**

13. As the applicant in this civil dispute, Ms. Copp must prove her claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
14. It is undisputed that Ms. Gustavson acted as NC's real estate agent in his purchase of the property. On February 17, 2020, NC and the sellers entered into a Contract of Purchase and Sale (Contract). Ms. Gustavson was not the sellers' agent.
15. The completion date was April 29, 2020, and the possession date was noon on May 1, 2020. The Contract included 3 conditions for NC's benefit. From emails in evidence

I infer that on February 29, 2020, the final condition was removed and NC paid a \$70,000 deposit.

16. At some point in April 2020 the parties realized that the tenant was not given notice to end the tenancy and was not prepared to move out on May 1.
17. Ms. Gustavson offered to pay NC \$1,500 to pay the tenant's May 2020 rent on the condition that he move out by June 1, 2020. On April 27, 2020, the tenant counter-offered to Ms. Copp and Ms. Gustavson that they would move out by June 1, 2020 in exchange for free May rent and \$6,000 cash. There is no response in evidence.
18. I infer from emails that the purchase completed on April 29, 2020. I find that on May 3, 2020, Ms. Gustavson paid NC \$1,500.
19. Ms. Copp says she paid the tenant \$5,000 and the tenant moved out on June 1, 2020.
20. Ms. Copp and NC wrote to the sellers seeking contribution to the tenant's \$5,000 payment without success. The sellers' position was that the buyer failed to provide the seller with a written request to end the tenancy.

### ***Standing and Privity of Contract***

21. Ms. Copp alleges that Ms. Gustavson breached the "BC Realtor Agreement" between Ms. Gustavson and NC. Neither party provided a copy of the agreement in evidence. However, it is undisputed Ms. Gustavson's agreement was only between Ms. Gustavson and NC.
22. Ms. Gustavson says Ms. Copp is attempting to bring a claim on NC's behalf and has no standing (ability to demonstrate a legal right or interest).
23. Ms. Copp says throughout the purchase process she was acting for NC under a power of attorney appointment. Ms. Gustavson says a power of attorney does not give the attorney the ability to commence or prosecute legal proceedings on the donor's behalf, relying on *Law Society of British Columbia v. Bryfogle*, 2007 BCCA 511. I find these arguments somewhat misplaced because there is no suggestion that

Ms. Copp is attempting to engage in the practice of law like in *Bryfogle*. Moreover, nothing in the Dispute Notice indicates Ms. Copp filed her CRT dispute on NC's behalf. Ms. Copp's claim is that she experienced harm by paying the tenant \$5,000, which is what she seeks to recover.

24. The legal doctrine of privity of contract provides that as a general rule, a contract cannot provide rights or impose obligations on any person except the parties to that contract. There are exceptions, but Ms. Copp does not argue that any of the exceptions apply and I find there is insufficient evidence to support an exception. I find that to the extent Ms. Copp's claim against Ms. Gustavson is based on breach of contract, it cannot succeed.

### ***Negligence***

25. Although Ms. Copp's claim was not perfectly articulated in the Dispute Notice, it is clear from her submissions that her claim was partly based in professional negligence.
26. To prove a claim in negligence, Ms. Copp must show that Ms. Gustavson owed her a duty of care, that Ms. Gustavson fell below the standard of care in fulfilling that duty, that Ms. Copp was harmed, and that Ms. Gustavson's failure to meet the standard caused Ms. Copp's harm, in fact and in law: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. Causation in law means the harm must be reasonably foreseeable.
27. I will first consider the harm and causation. Ms. Copp says she paid the tenant \$5,000 to vacate the lower suite and says he did so on June 1, 2020. In submissions, Ms. Gustavson says Ms. Copp has provided no cheque stub, receipt, statement from the tenant, or any other proof. I agree that Ms. Gustavson has not provided evidence of her loss. As noted, Ms. Copp bears the burden of proving each aspect of her claim, including damages. Despite Ms. Gustavson's raising the issue, Ms. Copp did not seek to provide additional evidence or explain in her reply submissions why such evidence was not available.

28. Even if I accepted that Ms. Copp paid the tenant \$5,000, Ms. Copp has not explained why it was necessary that the tenant vacate by June 1, 2020. On April 27, 2020, NC emailed the tenant and offered to have the tenant remain in the lower suite. NC said in an email the next day to Ms. Gustavson that if the tenant would stay and pay rent, “there is no problem.” It is not clear why this did not happen, and Ms. Copp offers no explanation.
29. Ms. Copp says her belongings at her previous residence in North Vancouver were packed and she had “no secure place to live,” but she provides no supporting evidence. She does not say she was renting and had already given notice to her landlord, or had sold and was required to vacate. I note a June 11, 2020 invoice she provided from a law firm is addressed to her at a North Vancouver address.
30. Text messages between NC and Ms. Gustavson indicate that Ms. Copp was living in condo that NC owned in North Vancouver. Ms. Gustavson said she did not see why Ms. Copp had to move urgently because NC would not likely be returning from abroad until August or September. The parties’ submissions do not address this exchange, but I find that Ms. Copp likely was able to remain in NC’s condo for a few months.
31. I understand that Ms. Copp was looking forward to moving into the lower suite, but she does not say that if she had not paid the tenant \$5,000, she would have incurred any economic loss. I find Ms. Copp’s loss of \$5,000 too remote, in addition to not being proved. I therefore dismiss Ms. Copp’s claim for \$5,000 in damages.
32. As a result, I find it is unnecessary to consider whether Ms. Gustavson owed a duty of care to Ms. Copp, a prospective tenant. I also find it unnecessary to consider whether Ms. Gustavson’s failure to ask the seller, in writing, to give notice to end the tenancy breached the standard of care of a reasonably competent real estate agent.
33. Ms. Copp also claims \$337.97 for legal fees and disbursements. Those charges related to her attempt to seek compensation from the sellers before the CRT dispute application was filed, so they are not a dispute-related expense, but regardless of

how they are categorized, I find Ms. Gustavson is not responsible for them. I dismiss the \$337.97 claim.

34. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Copp was unsuccessful, so I dismiss her claim for CRT fees. Neither party claimed any dispute-related expenses.

## **ORDER**

35. I dismiss Ms. Copp's claims and this dispute.

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Micah Carmody, Tribunal Member