



Civil Resolution Tribunal

Date Issued: August 9, 2021

File: SC-2021-001495

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Copp v. Gustavson*, 2021 BCCRT 868

BETWEEN:

NICOLAS COPP

APPLICANT

AND:

WENDY GUSTAVSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a house purchase. The applicant, Nicolas Copp, bought a house in February 2020 and the respondent, Wendy Gustavson, acted as his realtor for the transaction. At the time Mr. Copp bought the house, there was a tenant living in the downstairs suite. Mr. Copp says he instructed Ms. Gustavson to ensure the tenancy was terminated by the time he took possession of the house, but that she

failed to do so and so was negligent and in breach of their contract. He claims \$5,000 in damages for reimbursement of what he says he paid the tenant to move out.

2. Ms. Gustavson says it was the sellers' responsibility to provide vacant possession of the house, and their failure to do so is not her responsibility. She says she does not owe Mr. Copp anything. The sellers are not a party to this dispute.
3. Both parties are self-represented in this dispute.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. Here, I find that 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.
6. 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.
7. 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

8. The issue in this dispute is whether Ms. Gustavson was negligent or in breach of contract for failing to ensure the tenancy was terminated before Mr. Copp took possession of the house.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Mr. Copp must prove his claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mr. Copp's claims.
10. Mr. Copp signed a contract of purchase and sale for the house on February 17, 2020 (contract). As noted, the sellers are not parties to this dispute. The contract's completion date was April 29, 2020, and the possession date was May 1, 2020 at noon. Subjects were removed on February 29, 2020. At all relevant times, Ms. Gustavson was Mr. Copp's realtor.
11. At the time Mr. Copp signed the contract there was a tenant living in the house's downstairs suite. The contract required the sellers to provide vacant possession of the house but the sellers did not terminate the tenancy. The tenant did not move out of the house until May 31, 2020. None of this is disputed.

Negligence

12. Mr. Copp says Ms. Gustavson was negligent for failing to ensure the tenancy was terminated before he took possession of the house. Ms. Gustavson denies that she was negligent and says the contract required the sellers to provide Mr. Copp with vacant possession of the house.
13. To prove Ms. Gustavson was negligent, Mr. Copp must prove that she owed him a duty of care, that she breached her required standard of care, and that her breach caused Mr. Copp to suffer damages. I find that as Mr. Copp's realtor, Ms. Gustavson

owed him a duty of care. However, for the following reasons, I find Mr. Copp has not proven that Ms. Gustavson breached her required standard of care.

14. Ms. Gustavson's required standard of care was that of a reasonable and prudent realtor in the circumstances. Expert evidence is generally required to determine how a reasonable realtor would have conducted themselves in specific circumstances, although there are 2 exceptions to this general requirement. The first exception is when the matters in dispute are not technical and are within the knowledge of an ordinary person. The second exception is when the realtor's actions are so egregious that it is obvious their conduct has fallen short of the standard of care, even if the exact requirements of the standard of care are unknown (see *Aulakh v. Nahal*, 2017 BCSC 1000, affirmed on appeal 2019 BCCA 57).
15. In *Aulakh*, the realtor acted for both the buyer and seller of a home that had tenants at the time of purchase. The contract of purchase and sale required the seller to provide vacant possession of the house, but there was a miscommunication between the parties about the tenancy and the deal fell through. The court found the buyers always wanted vacant possession but the sellers believed the buyers wanted to keep the tenants. The court found the realtor believed the buyer and seller would deal with the tenancy issue directly with each other. However, the court found the realtor was negligent for failing to document the parties' intentions to deal with the tenancy on their own, and for failing to ensure the tenancy issue was properly resolved prior to closing. The court did not require expert evidence to determine that the realtor breached their standard of care in the circumstances.
16. Mr. Copp did not provide any expert evidence in this dispute about Ms. Gustavson's required standard of care. However, I find the facts of this dispute are different than those in *Aulakh*. As in *Aulakh*, the contract in this dispute required the seller to provide vacant possession of the house, and there was nothing else in the contract about the tenant or requiring the sellers to terminate the tenancy. However, unlike in *Aulakh*, in this dispute Ms. Gustavson acted only for the buyer, Mr. Copp. The evidence shows that in February 2020 when Mr. Copp signed the contract, Ms. Gustavson knew he

did not want the tenant to remain in the house. In a February 18, 2020 email to a mortgage broker, Ms. Gustavson said that no tenant was to remain in the house and she specifically noted the sellers' requirement in the contract to provide the buyer with vacant possession.

17. Mr. Copp says Ms. Gustavson was negligent for failing to add a clause to the contract requiring the sellers to terminate the tenancy because the "vacant possession" clause on its own was insufficient to ensure the tenancy would be terminated by the possession date. He says Ms. Gustavson's failure to add a such a clause to the contract fell below the standard of a competent realtor. However, as noted, Mr. Copp provided no expert evidence to establish that Ms. Gustavson's standard of care required drafting or adding such terms to the contract. I find an ordinary person would not know whether the "vacant possession" clause was sufficient to ensure the tenancy was terminated, and I find it was not plainly egregious that Ms. Gustavson did not add such a clause to the contract. So, I find expert evidence is required in this case. In the absence of such evidence, I find Mr. Copp has not established that Ms. Gustavson breached her required standard of care by failing to add a clause to the contract for the sellers to end the tenancy.
18. Mr. Copp also says Ms. Gustavson was negligent for failing to follow his explicit instructions to notify the sellers to end the tenancy. On February 24, 2020, Ms. Gustavson told Mr. Copp in an email that if the subjects could be removed by February 29, 2020 it would give the sellers adequate time to provide a notice to end tenancy to the tenant and to provide Mr. Copp with vacant possession. She said, "if he confirms that this gives him the time he needs, I will send your Contract Addendum today for your signature." From the email's context, I infer that "he" is one of the sellers. Mr. Copp responded by email on February 24, 2020, "the tenant doesn't have to move out if he is renting upstairs." Mr. Copp says his email response was an instruction to Ms. Gustavson to notify the sellers of their obligation to terminate the tenancy. He says that if Ms. Gustavson had notified the sellers on February 24, 2020 as he had instructed, before COVID-19 restrictions were in force, the sellers would

have had sufficient time to provide a 60-day notice to end tenancy under the *Residential Tenancy Act* by the May 1, 2020 possession date.

19. However, I find Mr. Copp's February 24, 2020 email cannot reasonably be interpreted as an explicit instruction to Ms. Gustavson to notify the sellers to terminate the tenancy. I also find there is no documentary evidence that Mr. Copp ever explicitly instructed Ms. Gustavson to notify the sellers to terminate the tenancy, and he does not claim to have done so verbally.
20. Mr. Copp also says Ms. Gustavson was negligent for failing to terminate the tenancy. However, it is undisputed that Ms. Gustavson was not the tenant's landlord, so I find she could not have terminated the tenancy.
21. In summary, I find Mr. Copp has not established that Ms. Gustavson breached her required standard of care, so he has failed to prove that she was negligent.

Breach of Contract

22. Mr. Copp says Ms. Gustavson breached her realtor agreement by failing to ensure the tenancy was terminated before he took possession of the house. However, he did not provide the agreement as evidence so I find I cannot determine whether Ms. Gustavson breached any of its terms. Mr. Copp also says Ms. Gustavson breached the contract of purchase and sale. However, Ms. Gustavson is not a party to that agreement, so I find she cannot be in breach of it. I also find the contract is silent about any obligations she had to Mr. Copp as his realtor. I find Mr. Copp has not established that Ms. Gustavson breached the terms of any contract.
23. Having found that Mr. Copp has failed to prove that Ms. Gustavson was negligent or in breach of any contract, I find he is not entitled to damages. However, even if Mr. Copp did prove that Ms. Gustavson was negligent or in breach of contract, I would not have found Ms. Gustavson's actions caused Mr. Copp to suffer a loss. On April 27, 2020, Mr. Copp emailed the tenant stating, "my sister had planned to move downstairs in May. But she can't do that as the whole thing got messed up. As landlord, let me tell you that it is perfectly OK for you to stay there as tenant, and there

is no notice or reason for you to leave” (reproduced as written). On April 28, 2020, Mr. Copp emailed Ms. Gustavson and others stating, “the tenant has agreed to move out subject to payment of 4 months rent as damages to him...I’m not buying with a tenant as my sister is moving downstairs.” Ms. Gustavson responded to Mr. Copp’s email stating, “I’m totally confused as you just sent [the tenant] an email telling him that it’s totally fine for him to stay.” Mr. Copp responded, “If he will stay and pay rent, there is no problem.” Based on these emails I find Mr. Copp failed to prove that he was required to pay the tenant to move out, rather than that simply being his preference.

24. I dismiss Mr. Copp’s claims.

25. 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. I see no reason in this case not to follow that general rule. Since Mr. Copp was unsuccessful, I find he is not entitled to reimbursement of CRT fees. Ms. Gustavson did not pay any fees. Neither party claimed any dispute-related expenses.

ORDERS

26. I dismiss Mr. Copp’s claims and this dispute.

Sarah Orr, Tribunal Member