



Civil Resolution Tribunal

Date Issued: May 3, 2022

File: SC-2022-001079

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malik v. Lee*, 2022 BCCRT 514

BETWEEN:

UMAIR MALIK

APPLICANT

AND:

NIM HIN LEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the applicant, Umair Malik, due to their non-compliance with the CRT's mandatory directions.

2. This dispute is about real estate agent commissions. The applicant represented the buyer in a real estate transaction where the respondent, Nim Hin Lee, was the seller. The applicant claims that they intended to give their client a \$2,000 discount, but due to a lawyer error during the closing process, the respondent ended up with the discount. The applicant claims \$2,000.
3. The applicant is self-represented. As discussed in more detail below, the respondent has not participated in this dispute.

JURISDICTION AND PROCEDURE

4. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with CRT rules in relation to the case management phase of the dispute, including specified time limits, or an order of the CRT made during the case management phase. While the CRTA does not specify whether the process for getting a default decision and order is part of the “case management phase”, I find that it is. After giving notice to the non-compliant party, the case manager may refer the dispute to a CRT member for resolution and the CRT member may:
 - a. Hear the dispute in accordance with any applicable rules,
 - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. The case manager has referred the applicant’s non-compliance with the CRT’s rules to me for a decision as to whether I ought to hear the dispute, refuse to resolve it, or dismiss it.
6. These are the CRT’s formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.

7. Where permitted under section 118 of the CRTA, the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. For the reasons that follow, I have dismissed the applicant's claims.

ISSUES

9. The first issue is whether the applicant is non-compliant with the CRTA and the CRT's rules.
10. If the applicant is non-compliant, the second issue is whether I should decide this dispute without the applicant's further participation, refuse to resolve it, or dismiss it.

EVIDENCE AND ANALYSIS

Non-compliance

11. For the following reasons, I find the applicant is non-compliant in this dispute, having failed to comply with the case manager's directions as required by sections 25 and 32 of the CRTA, and CRT rules 1.3(1) and 5.1 to 5.4. This is despite multiple attempts by the case manager to contact the applicant with a request for a reply.
12. The applicant applied for dispute resolution on February 9, 2022, which included their email address and phone number to be used for this dispute. The CRT served the respondent by regular mail. Under the CRT's rules, the respondent had to file a Dispute Response by March 14, 2022, but they did not do so. The respondent was therefore in default.

13. On March 21, 2022, the CRT emailed the applicant requesting they pay the fee for a default decision and order against the respondent. The applicant did not respond but paid the \$25 fee 5 minutes after the CRT sent the email.
14. Since then, the CRT has made the following attempts to contact the applicant:
 - a. On March 23, 2022, a case manager emailed a Request for Default Decision and Order Form, along with instructions on how to complete it. The case manager required the applicant to return the completed form by March 30, 2022, and warned that a failure to do so could result in the CRT refusing to resolve or dismiss their dispute.
 - b. On April 4, 2022, the case manager sent a follow-up email, requiring the completed form by April 11, 2022. The email contained the same warning as the March 23, 2022 email.
 - c. On April 12, 2022, the case manager phoned the applicant and left a voicemail requiring the completed form by April 19, 2022. The case manager also sent an email the same day, which again included the same warning as the March 23, 2022 email.
15. The applicant did not respond to any of the above attempts at contact. The case manager then referred the matter of the applicant's non-compliance with the CRTA and the CRT's rules to me for a decision as to whether I should hear the dispute without the applicant's further participation.
16. Based on the above, I find the applicant is non-compliant with the CRTA and the CRT's rules for their failure to respond to the case manager's requests for contact. As noted above, the applicant was warned 3 times, in writing, about the risks of their failure to comply with the case manager's directions. I turn then to whether I should refuse to resolve this dispute or dismiss it.

Should the CRT hear the dispute without the applicant's further participation?

17. As noted above, the applicant initiated this CRT dispute but then essentially abandoned it after paying the default fee. I find the CRT made a reasonable number of contact attempts, through both the email address and phone number that the applicant provided. Parties are told that they must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. Given the applicant's prompt payment of the default fee after receiving the CRT's March 21, 2022 email, I find it is more likely than not that the applicant knew about the CRT's attempts and failed to respond.

18. Rule 1.4(2) states that if a party is non-compliant, the CRT may:

- a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,
- b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,
- c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and
- d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

19. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT will consider:

- a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,
- b. The stage in the facilitation process at which the non-compliance occurs,

- c. The nature and extent of the non-compliance,
 - d. The relative prejudice to the parties of the CRT's order addressing the non-compliance, and
 - e. The effect of the non-compliance on the CRT's resources and mandate.
20. Based on the evidence described above, I find that the applicant had proper notice of the case manager's attempts to contact them, and knew the consequences if they failed to respond, which was the potential dismissal of their dispute. I am also satisfied the dispute only affects the named parties, and I see no prejudice to the respondent in making an order dismissing the applicant's dispute.
21. On the other hand, if I were to refuse to resolve the claim, there would be no finality to this dispute as it would be open to the applicant to make a further request for CRT resolution, subject to any limitation period.
22. The CRT's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the CRT to continue applying its resources on a dispute where the applicant shows they do not want the CRT's assistance in resolving their claim.
23. Although not binding on me, I agree with the reasoning in *Grand-Clement v. The Owners, Strata Plan KAS 2467*, 2017 BCCRT 45, that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the process by creating an imbalance of the CRT's fact finding and decision-making functions.
24. In weighing all the factors, I find the applicant's claims, and this dispute, should be dismissed.
25. In deciding to dismiss the claims rather than refuse to resolve them, I have put significant weight on the following factors:

- a. The extent of the non-compliance is significant,
 - b. The non-compliance occurred early on in the CRT process,
 - c. The respondents are not prejudiced by such an order, and
 - d. The need to conserve the CRT's resources.
26. Therefore, I dismiss the applicant's claims and this dispute.
27. Under its rules, the CRT can make orders about payment of fees or reasonable dispute-related expenses in the case of a withdrawal or dismissal. Given the applicant's non-compliance, I find they are not entitled to a refund of paid CRT fees.

ORDER

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

Eric Regehr, Tribunal Member