



Civil Resolution Tribunal

Date Issued: May 10, 2022

File: SC-2021-008632

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chung v. Ng*, 2022 BCCRT 556

BETWEEN:

PAMELA CHUNG

APPLICANT

AND:

HAYES NG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a referral rebate on a residential home purchase. The applicant, Pamela Chung, says her realtor, the respondent Hayes Ng, offered a \$2,488 “referral rebate” after the completion of her home purchase, which she says Mr. Ng now refuses to pay. Ms. Chung seeks \$2,488 for the rebate.

2. Mr. Ng says the rebate was offered out of goodwill, but Ms. Chung would not agree to the rebate's terms, so it was never paid. He denies owing Ms. Chung any money.
3. The parties are each self-represented.

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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that 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.
6. Section 42 of the CRTA says that 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.

Plumbing issue

8. In their arguments and submitted evidence, the parties spent significant time discussing a “plumbing issue” that arose after Ms. Chung took possession of her home. There is no claim before me about that plumbing issue, nor any remedy sought for it. Therefore, I have not addressed the plumbing issue in this decision.

Anonymization request

9. Through CRT staff, Mr. Ng requested this decision be anonymized. He says it could affect future relationships with clients or landlords.
10. The CRT’s decisions generally identify the parties because these are considered open proceedings, and transparency is an important element in maintaining the integrity of the justice system. The CRT only anonymizes decisions in certain limited situations, such as disputes involving vulnerable parties or sensitive information, such as confidential medical issues. Other than these circumstances, the CRT generally discloses the parties’ names. I find that Mr. Ng has not established his desire to protect his potential future relationships with clients outweighs the goal of maintaining open and transparent proceedings. I decline to anonymize the parties in this decision.

ISSUE

11. The issue in this dispute is whether Mr. Ng must pay Ms. Chung \$2,488 for a referral rebate.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Ms. Chung must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.

13. The following facts are undisputed:
 - a. Ms. Chung asked Mr. Ng to represent her as her buying agent in the purchase of her condominium in June 2021.
 - b. On June 29, 2021, at his own discretion, Mr. Ng offered Ms. Chung a referral rebate of approximately \$2,400 upon the transaction's completion.
 - c. The referral rebate is a percentage of Mr. Ng's sale commission.
 - d. Ms. Chung did not sign the referral rebate agreement form.
14. It is also undisputed the sale completed some time in late July or early August, and soon after Ms. Chung discovered the plumbing issue.
15. Mr. Ng sent Ms. Chung the referral rebate agreement form at least twice, on September 9 and 21, 2021. Ms. Chung reviewed the form both times, but did not sign either copy. In one of many follow up emails, Mr. Ng asked Ms. Chung to sign the agreement so he could pay out the referral rebate. As a consequence of the plumbing issue noted above, Ms. Chung told Mr. Ng by email on September 17 that she refused to sign the referral rebate agreement form unless Mr. Ng provided clarification on his position about paying her plumbing bills, which Mr. Ng refused to pay. In her submissions, Ms. Chung instead says she refused to sign the agreement because of a term about paying the rebate back or into court if litigation is started. The term is not clear about whether it relates to the commencement of any lawsuit, or just in relation to the referral rebate. In any event, Mr. Ng says this is a standard term required by his brokerage at the time. Notably, there is no mention of Ms. Chung's issue with this term in any of the parties' correspondence before Ms. Chung started this proceeding.
16. As a result of the delay and Ms. Chung's requests for compensation about the plumbing issue, Mr. Ng withdrew his offer for the referral rebate on October 20, 2021. Now, Ms. Chung wants the rebate paid.

17. The question is whether the parties had a binding agreement about the referral rebate. For a contract to exist, there must be an offer, acceptance, and consideration, which is something of value given by each party. As well, there must be a “meeting of the minds” about the contract’s subject matter (see: *Babich v. Babich*, 2015 BCPC 0175). Here, I find Ms. Chung’s claim must fail for 2 reasons.
18. First, I find there was no meeting of the minds about the contract’s terms, evidenced by the fact Ms. Chung refused to sign the agreement unless Mr. Ng clarified his position on the plumbing issue. I find the parties were not in agreement about the terms of the referral rebate and therefore, did not have a binding contract about it.
19. Second, I find there was no consideration. The parties do not dispute that Mr. Ng offered the rebate gratuitously, and received nothing in return for it. Without consideration, there is no legally binding contract.
20. As such, I find the parties did not have an enforceable contract, and I find Mr. Ng is not responsible to pay Ms. Chung the \$2,488 claimed. Ms. Chung’s claim is dismissed.
21. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Chung was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. Mr. Ng did not pay tribunal fees or claim any dispute-related expenses.

ORDER

22. I order Ms. Chung's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair