



Civil Resolution Tribunal

Date Issued: June 17, 2022

File: SC-2021-004938

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Derry v. Rakkar*, 2022 BCCRT 712

BETWEEN:

BONNIE EILEEN DERRY

APPLICANT

AND:

KIRANJIT KAUR RAKKAR, JASPREET KAUR PANAG, SATBIR
SINGH PANAG and SURJIT SINGH PANAG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. On December 7, 2020, the applicant Bonnie Eileen Derry sold a house to the respondents, Kiranjit Kaur Rakkar, Jaspreet Kaur Panag, Satbir Singh Panag, and Surjit Singh Panag. At the time of the sale, there were 3 separate tenants who paid a total of \$4,150 in rent per month. Ms. Derry says that the parties agreed to split

the December 2020 rent and as part of the sale process, she paid the respondents for their share. However, she says this was a mistake because she had not actually collected any December 2020 rent. Instead, the respondents collected rent after they took possession. She says that the respondents owe her \$4,150 to account for the amount she paid them as part of the sale and the amount they have refused to split. She asks for an order that the respondents pay her that amount.

2. The respondents say that they only had to collect December 2020 rent because Ms. Derry failed to do so herself before the completion date. In any event, they say that they only collected \$2,800 in rent for December 2020 because one tenant left without paying. They ask me to dismiss Ms. Derry's claim.
3. Ms. Derry self-represented. The respondents are all represented by a family member.

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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. The respondents provided evidence after the CRT's deadline. The late evidence included the buyers' and seller's statements of adjustments, which I find were key pieces of evidence. The CRT gave Ms. Derry an opportunity to comment on the late evidence, but she chose not to do so. I find that Ms. Derry likely already had copies of all the late evidence anyway. The CRT's mandate includes providing proportional, flexible, and informal dispute resolution services, and I find that Ms. Derry was not prejudiced by the late evidence. So, I have admitted and considered it in making this decision.

ISSUES

9. The issue in this dispute is how much, if anything, the respondents owe Ms. Derry for December 2020 rent.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Derry as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The facts are undisputed. The respondents purchased a house from Ms. Derry with an initial completion date in late November 2020. The parties later agreed to move the completion date to December 7, 2020. There were 3 separate tenancies in

place for December 2020. Two tenants paid \$1,400 per month each and the other tenant paid \$1,350 per month, for a total of \$4,150 per month.

12. The statements of adjustments that the parties signed assumed that Ms. Derry would collect December rent because she remained the owner on December 1, 2020. Accordingly, the statements of adjustment gave a credit to the respondents to account for their pro-rated share of rent from December 7 to 31, 2020, which was \$3,346.77. They debited the same amount from Ms. Derry.
13. However, Ms. Derry did not collect any rent for December 2020. She says that she stopped the automatic bank withdrawals in November because of the original closing date. She says that she informed her realtor of this, but for unknown reasons, this information never made it to the parties' lawyers. So, when the sale closed on December 7, 2020, the respondents were unaware that Ms. Derry had not collected rent. Ms. Derry did not notice the error on the seller's statement of adjustments. In short, Ms. Derry effectively paid the respondents \$3,346.77 for their share of rent that she had not collected.
14. It is unclear when the respondents realized that Ms. Derry had not collected rent, but at some point in December they approached the tenants for December's rent. The 2 \$1,400 per month tenants paid their rent, but the \$1,350 tenant abandoned the property without paying. So, the respondents only collected \$2,800 in rent. Again, none of this is disputed.
15. Neither party provided a copy of the contract of purchase and sale. Still, I find that it is clear from the parties' submissions and the signed statements of adjustment that they agreed to split December 2020 rent.
16. The respondents suggest that Ms. Derry should have collected December 2020 rent since she was still the owner on December 1, when rent was due. Ms. Derry provided correspondence between the parties' law firms from after the sale. The respondents' conveyancer and lawyer never raised this issue, which I would expect if there was an explicit contractual term about Ms. Derry collecting rent. I therefore

find it unlikely that there was a contractual term requiring Ms. Derry to collect rent due before the completion date.

17. With that, I find that the respondents breached the contract by receiving a share of rent that Ms. Derry did not collect. I also find that they breached the contract by collecting rent and not providing Ms. Derry with her proportionate share. I find that it makes no difference that the respondents' breach was accidental, which it appears to have been.
18. So, what are Ms. Derry's damages? As mentioned above, she was debited a total of \$3,346.77 for December rent that she did not actually collect. I find that Ms. Derry is entitled to be repaid this amount.
19. As for the rent that the respondents collected, I find that they must pay Ms. Derry her proportionate share. However, I agree with the respondents that Ms. Derry is not entitled to a share of the \$1,350 in rent that the respondents were unable to collect. So, I find that she is only entitled to her share of the \$2,800 the respondents received in December rent, which is \$541.94. Her total damages are therefore \$3,896.71. I order the respondents to pay Ms. Derry this amount.
20. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Derry is entitled to pre-judgment interest on the award from the completion date to the date of this decision. This equals \$26.76.
21. 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. Derry has been mostly successful, so I find she is entitled to reimbursement of \$175 in CRT fees. She did not claim any dispute-related expenses.

ORDERS

22. Within 30 days of the date of this order, I order the respondents to pay Ms. Derry a total of \$4,098.47, broken down as follows:

- a. \$3,861.71 in damages,
- b. \$26.76 in pre-judgment interest under the COIA, and
- c. \$175 in CRT fees.

23. Ms. Derry is entitled to post-judgment interest, as applicable.

24. Under section 48 of the CRTA, the CRT 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 CRT's final decision.

25. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member