



Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2022-001084

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buksh-Khan v. Sharma*, 2022 BCCRT 881

BETWEEN:

DOREEN BUKSH-KHAN

APPLICANT

AND:

SANDHYA SHARMA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Acting Chair and Vice Chair

INTRODUCTION

1. This dispute is about rental income paid around the time of a residential home sale. The applicant seller, Doreen Buksh-Khan, says the respondent buyer, Sandhya

Sharma, owes \$870 for a rental credit Ms. Sharma received in the home sale transaction. Ms. Buksh-Khan says that under the parties' June 22, 2021 contract of purchase and sale (CPS), Ms. Sharma understood the tenant MT would not have to pay rent for the entire month of September 2021 and so Ms. Sharma therefore agreed she would not "take the money". Ms. Buksh-Khan claims the \$870.

2. Ms. Sharma denies the CPS obligated her not to take any rental income. MT undisputedly moved out on September 19, 2021 and Ms. Sharma says she (Ms. Sharma) received the \$870 rent credit as part of her statement of adjustments during the home's purchase, which Ms. Buksh-Khan signed.
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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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 is whether Ms. Sharma owes Ms. Buksh-Khan the claimed \$870 for a rent credit Ms. Sharma received as part of her purchase of Ms. Buksh-Khan's property.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Buksh-Khan must prove her claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the submitted evidence and the parties' arguments, but only refer to what is necessary to give context to my decision.
10. As noted above, Ms. Buksh-Khan sold her tenanted property to Ms. Sharma. MT was the tenant, paying \$900 per month in rent. At Ms. Sharma's request, in July 2021 Ms. Buksh-Khan gave MT 2 months' notice to vacate as Ms. Sharma advised that her family members intended to occupy the property. MT did not pay rent for September 2021 because under sections 49 and 51 of the *Residential Tenancy Act* (RTA), a tenant is entitled to 1 month's free rent as compensation when the tenant is evicted for a purchaser's occupation. The sale's closing date was August 30, 2021 and the possession date was September 2, 2021. So, by the end of August Ms. Buksh-Khan had moved out. MT did not move out until September 19, 2021. None of this is disputed.
11. In the CPS' July 21, 2021 Addendum, signed by the parties, Ms. Sharma requested Ms. Buksh-Khan to give MT the notice to vacate. Further, in the Addendum Ms.

Sharma agreed that MT was not required to vacate the property until September 30, 2021 and that MT “will not be required to pay rent for the entire month of September 2021” in accordance with the RTA.

12. In the September 2, 2021 “Seller Statement of Adjustments”, there is a \$870 debit for “buyer’s portion of rent paid to seller” for 29 of September’s 30 days (\$900 x 29/30). Similarly, the “Buyer Statement of Adjustments” shows an \$870 credit to Ms. Sharma, for the same 29 days of September rent, with initials at the bottom though I cannot tell if any are Ms. Buksh-Khan’s. However, Ms. Buksh-Khan admits she agreed to the statement of adjustments.
13. In essence, Ms. Buksh-Khan says the \$870 rent credit in Ms. Sharma’s favour was a mistake, because MT never paid any September 2021 rent. Ms. Buksh-Khan argues that since MT did not pay September rent, the CPS language logically meant that Ms. Sharma should not have received any rent credit in the sale transaction.
14. I note Ms. Buksh-Khan says at Ms. Sharma’s request Ms. Buksh-Khan agreed to move the closing date to August 30, 2021, which was earlier than originally arranged. However, Ms. Buksh-Khan does not explain how this impacted MT’s “last month” rent obligation or the parties’ execution of the CPS and statement of adjustments. Without more, I place no weight on the alleged closing date change.
15. I find this dispute turns on 4 things. First, whether the CPS language precluded Ms. Sharma from receiving any rent credit for MT’s September 2021 occupation of the property. Second, whether the statement of adjustments, agreed to by the parties, governs Ms. Sharma’s entitlement to the \$870. Third, whether the RTA dictates whether Ms. Sharma was entitled to the \$870. Fourth, whether the law of mistake entitles Ms. Buksh-Khan to a refund of the \$870 credit to Ms. Sharma.
16. First, I find the CPS language did not preclude Ms. Sharma from receiving the rent credit from Ms. Buksh-Khan. This is because the CPS Addendum only addressed MT’s rent obligations and that MT would not be paying September rent. Contrary to

Ms. Buksh-Khan's apparent assertion, it did not say Ms. Sharma would not receive credit for September rent.

17. Second, the statement of adjustments. I find that Ms. Buksh-Khan agreed to credit Ms. Sharma the \$870. As noted, she admits she signed or initialed the statement of adjustments and it is clear Ms. Buksh-Khan's lawyer, as her agent, prepared her seller statement of adjustments that reflected that credit.
18. Third, the RTA. I find no legal basis to conclude the RTA provisions, which govern the relationship between a tenant and landlord, overrides the parties' agreement, which is about their own buyer-seller relationship and CPS agreement. In other words, there is nothing in the RTA that requires any particular outcome between a buyer and a seller. Rather, the RTA is focused on rights and obligations owed between a tenant and landlord. MT is not a party to this CRT dispute.
19. Fourth, the law of mistake and whether it entitles Ms. Buksh-Khan to the claimed \$870 refund under the parties' contract. As discussed in *Hannigan v. Hannigan*, 2007 BCCA 365, citing *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.* (2003), 2003 ABCA 221, there are 3 types of mistake: common, mutual, and unilateral. Common mistake is where the parties make the same mistake. Mutual mistake occurs when both parties are mistaken, but their mistakes are different. In a mutual mistake, the parties misunderstand each other and are "not on the same page". Unilateral mistake is where only one of the parties is operating under a mistake (see paragraph 129 of *Royal Bank of Canada v. G.S. Continuous Gutters Inc.*, 2022 BCSC 366).
20. The law of mistake says that a mistaken party is generally entitled to relief only when the other party knew or should have known about the mistake, remained silent, and 'snapped' at the offer. See *256593 BC Ltd. v. 456795 BC Ltd. et al*, 1999 BCCA 137, citing *McMaster University v. Wilchar Construction Ltd.*, 1971 CanLII 594 (ONSC).

21. To succeed based on mistake, Ms. Buksh-Khan must show that Ms. Sharma knew or must be taken to have known that Ms. Buksh-Khan misunderstood the significance of the statement of adjustments and the \$870 credit and did nothing to bring it to Ms. Buksh-Khan's attention. Ms. Buksh-Khan must show that the mistake would have been obvious to a reasonable person in the circumstances and that taking advantage of it amounts to equitable fraud (see *Royal Bank* at paragraph 129).
22. I find Ms. Buksh-Khan cannot succeed based on the law of mistake. I say this because Ms. Buksh-Khan alleges a unilateral mistake, that she relied on the lawyers to correctly draft the paperwork. While Ms. Buksh-Khan does not expressly say this, I infer she says she agreed to the statement of adjustments without noticing the \$870 credit. The difficulty for Ms. Buksh-Khan is that there is no evidence Ms. Sharma knew Ms. Buksh-Khan would have perceived the \$870 credit as a mistake, bearing in mind Ms. Sharma did not see it as a mistake herself. Lawyers assisted both parties with the statement of adjustments. I cannot conclude a reasonable person in the circumstances ought to have known the \$870 credit was a mistake simply because MT did not pay any rent for September. The fact that MT continued to reside on the property until September 19 supports my conclusion. In other words, Ms. Sharma's position is that despite MT's rights under the RTA, in the parties' contract she was entitled to rent credit for September. I find nothing in the CPS, statement of adjustments, or the RTA that suggests that position was unreasonable.
23. Given my conclusions above, I dismiss Ms. Buksh-Khan's claim.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Buksh-Khan was unsuccessful, I find she is not entitled to reimbursement of CRT fees. Ms. Sharma did not pay CRT fees and no dispute-related expenses were claimed.

ORDER

25. I dismiss Ms. Buksh-Khan's claim and this dispute.

Shelley Lopez, Acting Chair and Vice Chair