Civil Resolution Tribunal

Date Issued: September 8, 2022

File: SC-2022-000231

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Friesen v. Pace Realty Corporation*, 2022 BCCRT 995

B E T W E E N :

ALBERT FRIESEN

**APPLICANT**

A N D :

PACE REALTY CORPORATION

**RESPONDENT**

A N D :

ALBERT FRIESEN

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member: Kristin Gardner

## INTRODUCTION

1. This dispute is about property management services.

2. The applicant and respondent by counterclaim, Albert Friesen, contracted with the respondent and applicant by counterclaim, Pace Realty Corporation (Pace), for Pace to manage 2 rental units Mr. Friesen owned. Mr. Friesen says he sold one of his units and advised Pace, so that Pace could provide the tenant with sufficient notice to vacate. Mr. Friesen says that Pace failed to give the required notice, and so to meet his obligation to provide a vacant unit, Mr. Friesen says he had to pay the tenant $2,500 as an incentive to move out early. Mr. Friesen claims reimbursement of that $2,500 payment.

3. Pace says that it did not receive Mr. Friesen's email requesting that it provide notice to his tenant. Pace says that by the time Mr. Friesen contacted Pace directly, it was already past the time to provide sufficient notice. So, Pace says it is not responsible for any incentive Mr. Friesen paid the tenant to move out early.

4. Pace counterclaims $630 for Mr. Friesen's failure to give the contractually required 2 months' notice to terminate his contracts with Pace for his rental units. Mr. Friesen says he gave sufficient notice for one unit, but admits he owes the claimed $300 plus tax fee for the other unit.

5. Mr. Friesen is self-represented. Pace is represented by its managing broker, MJJ.

## JURISDICTION AND PROCEDURE

6. 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.

7. 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.

8. 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.

9. 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.

## ISSUES

10. The issues in this dispute are:

    a. Whether Pace was negligent in failing to provide Mr. Friesen's tenant with sufficient notice to vacate, such that Pace must reimburse Mr. Friesen the $2,500 he paid the tenant to move out early, and

    b. Whether Mr. Friesen failed to provide sufficient notice to terminate his contract with Pace.

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Friesen must prove his claims on a balance of probabilities (meaning "more likely than not"). Pace bears the same burden to prove its counterclaim. I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

***Mr. Friesen's claims against Pace***

12. It is undisputed that Mr. Friesen and Pace signed a service agreement in November 2018 for Pace to manage several units Mr. Friesen owned in an apartment building. I infer from the evidence that Mr. Friesen sold some of the units over time. The only 2 remaining units, E21 and H119, are at issue in this dispute. Mr. Friesen's claim is about unit H119.

13. It is undisputed that Mr. Friesen sold unit H119 in about September 2021, though the contract of purchase and sale and the date Mr. Friesen signed it are not before me. In any event, it is also undisputed that it was a condition of the sale that Mr. Friesen would provide the purchaser with vacant possession of unit H119 as of December 1, 2021. At the time of the sale, H119 was rented to FG, who is not a party to this dispute.

14. Under sections 49 and 52 of the *Residential Tenancy Act* (RTA), under certain conditions, a landlord may end a tenancy when the rental unit is sold, provided the landlord gives the tenant at least 2 months' written notice to vacate the unit. Therefore, I find FG had to receive written notice by September 30, 2021 to vacate unit H119 by November 30, 2021.

15. Mr. Friesen says he emailed Pace on Monday, September 27, 2021 about giving the tenant notice to vacate unit H119. The evidence shows Mr. Friesen directed his email to LM, who was in Pace's accounting department. He stated in the email that he was not sure who to contact, but that he had LM in his contacts list and thought she could forward his request to the appropriate person. Mr. Friesen asked that the unit H119 tenant be provided with a notice to vacate due to a sale, and he attached confirmation that the purchaser had removed the subjects to sale, which is a condition for giving a tenant notice to vacate under the RTA.

16. Unknown to Mr. Friesen, LM had ceased working with Pace in April 2021. Mr. Friesen says he assumed Pace had received his email and provided FG with the required notice to vacate because he did not receive any "bounce back" or automatic reply email. Mr. Friesen also provided evidence that he attempted to follow up on his email

to LM on October 1, 2021, by calling Pace and sending emails to other Pace email addresses. He says Pace also did not respond to these contact attempts. However, given these further attempts were made after the deadline to provide FG with the notice to vacate, I find nothing turns on those attempts.

17. Mr. Friesen says it was not until his realtor contacted Pace on Saturday, October 16, 2021, that he received a call from Pace's sales manager, MD. Mr. Friesen says MD told him that Pace had not received his emails, but that she would post the notice to vacate once Mr. Friesen sent her confirmation that the subjects to sale were removed. Mr. Friesen also received a text from MJJ on October 16, 2021, and she advised him that despite checking "every email account" and carbon-copied phone message, Pace had no record of Mr. Friesen's alleged messages. MJJ also stated that Pace would deal with providing notice to the tenant after the weekend.

18. Mr. Friesen emailed the subject removal confirmation to MD on October 18. It is undisputed that MD and MJJ spoke with FG on October 18, and that FG indicated he was willing to move out by December 1, so long as he could find other suitable accommodation. However, Pace did not provide FG with formal written notice to vacate unit H119 until MD hand-delivered such notice on November 1, 2021. A copy of the notice provided to FG is not in evidence, but I infer it stated FG was required to vacate the unit by December 1, 2021. As noted, this did not comply with the notice period required under the RTA. It is undisputed that the effect of this discrepancy was that FG was not obligated under the RTA to move until January 31, 2022.

19. Mr. Friesen says this put him in a very difficult negotiation position with FG, as his sales agreement required that he somehow convince FG to move out by November 30. Ultimately, the evidence shows that FG and Mr. Friesen signed a November 13 agreement that FG would move out on November 30 and Mr. Friesen would pay him $2,500 to do so.

20. Mr. Friesen argues that Pace should have to reimburse him for the $2,500 payment because it failed to provide an appropriate level of customer service, which resulted

in late service of the notice to vacate. I find Mr. Friesen is essentially saying that Pace was negligent.

21. To prove negligence, Mr. Friesen must show that Pace owed him a duty of care, Pace failed to meet the applicable standard of care, and that failure caused Mr. Friesen's reasonably foreseeable damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

22. I accept that Pace owed Mr. Friesen a duty of care as one of its clients. As for the standard of care, I find Pace was required to reasonably respond to communications and reasonable instructions it received from Mr. Friesen, including those related to serving tenants with a notice to vacate in compliance with the RTA timelines.

23. The difficulty here is that Mr. Friesen sent his initial September 27 email to LM, who was a former employee in the accounting department. Mr. Friesen admits that he was unsure who to contact, but he does not explain why he did not simply phone Pace at the time. He says only that LM had directed his inquiries in the past, though he provided no evidence of these alleged communications. Given that LM left Pace in April 2020, I find Mr. Friesen's most recent contact with her would have been more than 5 months earlier.

24. Mr. Friesen argues that Pace must not have deactivated LM's email address, as he did not receive a "bounce back" that his email was undeliverable. Pace did not directly respond to this argument in its submissions. However, in a December 6, 2021 email to Mr. Friesen, MJJ told him that LM's email address was "inactive", and that she had checked and no email was received from him. While I find that Mr. Friesen likely would have made further efforts to contact Pace on September 27 had he received a notification that his email to LM was undeliverable, I also find it is very unlikely that Pace would leave a staff member's email account active for more than 5 months after their departure. I find there is essentially a tie in the parties' evidence on this point. As noted, Mr. Friesen bears the burden to prove Pace failed to disable LM's email account. I find he has not met his burden.

25. Further, even if LM had still been a Pace employee, I find Mr. Friesen has not established that it was reasonable for him to email her with time-sensitive instructions for serving FG with a notice to vacate. In MJJ's December 6 email referenced above, she noted that all of Mr. Friesen's other email correspondence had been with a property manager, WE, and a general Pace "propertymanager" email account. Mr. Friesen does not dispute this. Pace also provided evidence that WE had emailed Mr. Friesen about one of his other units on August 3, 2021. I find Mr. Friesen has not provided an adequate explanation for sending his September 27 email to someone in the accounting department, rather than to a property manager email account he had previously used.

26. I note that under the RTA, only if the notice to vacate is given directly to the tenant or an adult living with the tenant, is the notice considered received that day. Otherwise, a notice to vacate can be posted to the tenant's door or placed in their mailbox, in which case it is considered received 3 days later. So, to ensure that FG received the notice by September 30, I find Pace would have had to post the notice on FG's door or in his mailbox by September 27, which was the same day Mr. Friesen emailed LM.

27. Under the circumstances, given that Mr. Friesen did not receive confirmation from LM or anyone else that his email had been directed to the appropriate person, I find he reasonably should have made some effort to ensure Pace had received his email. As noted, I find Mr. Friesen's alleged attempts to follow up after October 1 were insufficient, as they were made after the deadline for providing notice to FG had already passed. Overall, I find Mr. Friesen has not proven Pace breached the standard of care by failing to reasonably respond to his September 27 email.

28. Mr. Friesen also argues that Pace failed to provide FG with valid written notice after he spoke to MD on October 16, as promised. However, I find Mr. Friesen has not shown the delay in serving written notice on November 1 made any difference to the amount he had to pay FG to move out early. In other words, even if Pace's delay from October 16 to November 1 was a breach of the standard of care, I find Mr. Friesen

has not shown the breach caused his loss. Overall, I find Mr. Friesen has not proven Pace acted negligently, so I dismiss his claims.

***Pace's counterclaim against Mr. Friesen***

29. It is undisputed that the parties' agreement required Mr. Friesen to provide Pace with 2 months' written notice of his intention to terminate the agreement. It also provided that if Mr. Friesen did not give a full 2 months' notice, Mr. Friesen must pay Pace a $300 separation fee per unit.

30. Pace says that Mr. Friesen failed to give the required notice for terminating the agreement for Pace to manage units H119 and E21. As noted, Mr. Friesen agrees that he did not give sufficient notice to terminate the agreement relating to unit E21, and that he owes the $300 separation fee for that unit. So, I find he must pay it.

31. As for unit H119, Mr. Friesen argues that his September 27, 2021 email to LM stating that he had sold unit H119 constituted written notice that he was terminating his agreement with Pace for that unit. I disagree. Clause 11 of the parties' agreement states that any notices required to be given by Mr. Friesen to Pace under the agreement must be delivered by fax, by hand, or by registered mail. So, even if Pace had received Mr. Friesen's September 27 email, I find email was not a valid method for providing notice of termination under the contract.

32. Therefore, I find that Mr. Friesen did not provide the required 2 months' notice of his intention to terminate the parties' agreement for unit H119, and he must pay the $300 separation fee. The parties' agreement provided that Pace was also entitled to charge GST on any fees charged. So, I order Mr. Friesen to pay Pace the claimed $630.

***Interest, CRT fees, and dispute-related expenses***

33. The *Court Order Interest Act* applies to the CRT. Pace is entitled to pre-judgment interest on the $630 from December 17, 2021, the date Mr. Friesen advised Pace that unit E21 had been sold, to the date of this decision. This equals $3.58.

34. 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. As Mr. Friesen was unsuccessful, I dismiss his claim for CRT fees. Pace was successful in its counterclaim, so I find it is entitled to reimbursement of $75 in CRT fees. Neither party claimed dispute-related expenses.

## ORDERS

35. Within 21 days of the date of this decision, I order Mr. Friesen to pay Pace a total of $708.58, broken down as follows:

    a. $630 in debt for separation fees,

    b. $3.58 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $75 in CRT fees.

36. Pace is entitled to post-judgment interest, as applicable.

37. I dismiss Mr. Friesen's claims.

38. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member