



# Civil Resolution Tribunal

Date Issued: September 15, 2022

File: SC-2022-001671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carroll v. Allen*, 2022 BCCRT 1021

BETWEEN:

SHAWN CARROLL and ANGELA MARIE VAN DEN BROEK

**APPLICANTS**

AND:

LAURIE MARIE ALLEN and DARREN HOWARD ADAMS

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about the breach of a Contract of Purchase and Sale (CPS) for a residential home. The applicants, Shawn Carroll and Angela Marie van den Broek, purchased a home from the respondents, Laurie Marie Allen and Darren Howard

Adams. The applicants say the respondents failed to provide vacant possession by the September 1, 2021 possession date and seek \$5,000 in damages.

2. The respondents do not deny they breached the contract, but say the breach was “out of their control” and due to a housing crisis in the area. They deny owing the applicants any money.
3. The applicants are self-represented. Mrs. Allen represents the respondents.

## **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. Some of the evidence in this dispute amounts to a “they said, they said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

## **ISSUE**

8. The issue in this dispute is to what extent, if any, the applicants are entitled to the claimed \$5,000 in damages.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicants must prove their 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.
10. On June 6, 2021 the parties entered into the CPS for the sale of the respondents’ residential home. At the time of the sale, the home had tenants on both the main floor and the basement. According to the CPS, the applicants were to receive vacant possession of the home on September 1, 2021. However, neither the main floor nor basement tenants moved out by that date. None of this is disputed.
11. The applicants say they had to stay in short term rental accommodation because they could not move into the home as scheduled. Their intention was to live in the basement while they performed minor renovations on the main floor, then move onto the main floor. It is undisputed the main floor tenants moved out as of September 6, 2021. The applicants moved onto the main floor on September 18, 2021. The basement tenants did not move out until January 9, 2022.

12. In total, the applicants seek compensation for the following:
- a. Accommodation: \$340
  - b. Food expenses: \$323.47
  - c. Storage: \$429.30
  - d. Moving labour: \$160
  - e. Fuel: \$40
  - f. Truck rental: \$84.01
  - g. Mail hold expense: \$22.58
  - h. Lawyer fees: \$1,000
  - i. Mr. Carroll's lost vacation time: \$785.50
  - j. Mrs. van den Broek's lost income: \$895.86
  - k. Unpaid rent: \$1,290
13. Although the above totals \$5,370.72, the applicants have abandoned their claim above \$5,000, which is the CRT's small claims monetary limit.
14. The respondents admit the applicants were supposed to have vacant possession of the property by September 1, 2021 at 1:00pm and did not receive it. As noted, the respondents say the tenants failed to move out because of a housing crisis in the area, and that it was out of their control so they should not be held responsible for their admitted breach of the CPS.
15. The problem for the respondents is that they agreed to provide the applicants with vacant possession on September 1, 2021 and failed to do so. The respondents breached the CPS, which they admit, and a community housing crisis does not relieve them of their responsibilities under the parties' contract.

16. So, the only issue is what damages are the applicants entitled to as a result of the breach? The applicants are entitled to be put in the position they would have been in if the CPS had not been breached. I will deal with each of the applicants' requested items in turn.

### ***Accommodation***

17. The applicants stayed in a local bed and breakfast from September 1 to 11, 2021, a total of 10 nights. From September 11 to 18, 2021, the applicants stayed at their realtor's home, for which they do not claim reimbursement.

18. Mrs. Allen says she paid for 6 nights accommodation (until September 7, 2021) and offered to pay more, but the applicants declined. In contrast, the applicants say they asked for more, and the respondents declined. They seek \$340 for their time at the bed and breakfast from September 7 to 11, 2021.

19. As noted, the main floor tenants moved out on September 6, 2021. The applicants planned to perform minor renovations to the main floor while temporarily living in the basement, which continued to be tenant-occupied until January 9, 2022. I find the applicants reasonably stayed in rental accommodation while performing the renovations. I also find the applicants reasonably mitigated their damages by moving from the short term rental accommodation to their realtor's home at no cost to them. I find nothing turns on whether the respondents offered further compensation at the time or not.

20. As a result of the respondents' breach of the CPS, I find they must reimburse the applicants \$340 for short term rental accommodation expenses.

### ***Food expenses***

21. The applicants claim \$323.47 in food expenses from September 1 to 8, 2021, but only submitted receipts totaling \$283.78. For those receipts that contain mostly alcoholic beverages, I have only allowed the food expenses. I find the respondents must reimburse the applicants \$195.42 for reasonably incurred meal expenses.

## ***Storage***

22. The applicants claim \$429.30 in storage costs from September 1 to December 13, 2021 because they were unable to move all of their belongings into their new home. Although the applicants were able to move into part of the home in September, they did not have access to the full home until early January 2022. They said they had to store their basement furniture until they had access to that area. The applicants say that to save on storage costs they vacated the storage unit early, in mid-December 2021, even though they still did not have possession of the basement until January 2022. I find the applicants acted reasonably in incurring the storage costs, and that the costs were a result of the respondents' breach. I find the respondents must reimburse the applicants \$429.30 for storage fees.

## ***Moving labour***

23. The applicants claim \$160 in "moving labour" for 2 people for 4 hours each at \$20 per hour. They say this was for moving their belongings into the storage unit on September 1 and then out of the unit on December 13. They did not explain who did the moving, whether it was the applicants themselves, or whether they hired someone. However, I accept the applicants had extra moving expenses in and out of the storage unit as the home was not vacant, as a result of the respondents' breach. I find \$160 is likely a conservative estimate of these expenses and find the respondents must reimburse this amount.

## ***Fuel***

24. The applicants claim \$40 in fuel for traveling from their temporary accommodation "to town and back". They did not explain where their temporary accommodation was located or why they had to drive back and forth, or how many times they had to do so. I find the applicants have not proven they are entitled to reimbursement for fuel expenses.

### ***Truck rental***

25. The applicants claim \$84.01 for a truck rental on October 5, 2021 for moving a “spare bed to the house for a visit” from Mrs. van den Broek’s father. The applicants did not provide any further explanation about this expense. It is not clear to me why the applicants allege this expense should be covered by the respondents. I find the applicants are not entitled to its reimbursement.

### ***Mail hold expense***

26. The applicants paid Canada Post \$22.58 to hold their mail from September 4 to 21, 2021. I find this was a reasonable step given on September 4 the home was still fully occupied by tenants. I find the respondents must reimburse the applicants for this expense.

### ***Legal fees***

27. To help facilitate the tenants vacating the home, the applicants sought legal assistance in drafting an agreement with the basement tenants so they would vacate the property. Unfortunately, the tenants did not ultimately comply with that agreement. The applicants seek \$1,000 as reimbursement for these legal costs.

28. I find it was the applicants’ choice to try to negotiate a new vacancy date with the basement tenants. The respondents had already issued eviction notices and there was an ongoing dispute before the Residential Tenancy Branch (RTB). Instead of waiting for the outcome of the RTB dispute, the applicants elected to try to expedite the process through a lawyer. Although this may have been an attempt to mitigate their damages, they have not shown incurring this expense was reasonable given the ongoing RTB process. So, I find the applicants are not entitled to reimbursement for those legal fees.

### ***Mr. Carroll's vacation time***

29. Mr. Carroll took 5 days of vacation time from August 30 to September 3, 2021 to facilitate the move. The applicants say 3 of those vacation days were wasted (September 1 to 3) due to the property not being vacant. They say this amounts to a \$785.50 loss, although they later say its value is \$781.75. First, I find September 1 would have likely been required as a vacation day whether the property was vacant or not, as it was possession day. Second, the applicants have not explained why Mr. Carroll could not cancel his vacation days for September 2 and 3 once they knew the property was not vacant. I find the applicants have not shown the respondents are responsible for Mr. Carroll's "wasted" vacation days.

### ***Mrs. van den Broek's lost income***

30. The applicants say Mrs. van den Broek is a counsellor and because the applicants did not have access to the home she was unable to set up an appropriate space to meet with clients. They claim \$895.86 as 3 weeks' lost income.

31. First, the applicants did not explain why Mrs. van den Broek could not use other space or meet with clients virtually, instead of completely cancelling her schedule for all of September (though I note they only claim 3 weeks' time). Second, the applicants did not provide sufficient details of how many appointments Mrs. van den Broek had to cancel, or the monetary value of those cancelled appointments. So, I find the applicants have not proven Mrs. van den Broek is entitled to compensation for lost income as a result of the respondents' breach.

### ***Unpaid rent***

32. The applicants claim \$1,290 in unpaid rent, which I infer is for December's rent and the first 9 days of January, after which time the basement tenants moved out. This is based on the basement tenants paying \$1,000 to the applicants for October's rent. The applicants admittedly waived November's rent to encourage the tenants to move out.

33. Had the CPS been carried out as agreed, the applicants would have had use of the basement during this time. Here, they did not, as a result of the respondents' breach. I find the best measure of compensation for that breach is the monthly rent the tenants paid. So, I find the respondents must pay the applicants \$1,290 for their inability to use the basement from December 1, 2021 to January 9, 2022.

### **Summary**

34. As a result of their breach of the CPS, I find the respondents must reimburse the applicants a total of \$2,437.30.

### **Interest, fees and expenses**

35. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest under the COIA on the reimbursable expenses, from the day they were incurred to the date of this decision. This equals \$15.31.

36. 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. As the applicants were only partially successful, I find they are entitled to reimbursement of their paid tribunal fees, for a total of \$87.50. Neither party claimed dispute-related expenses.

## **ORDERS**

37. Within 30 days of the date of this decision, I order the respondents, Laurie Marie Allen and Darren Howard Adams, to pay the applicants, Shawn Carroll and Angela Marie van den Broek, a total of \$2,540.11, broken down as follows:

- a. \$2,437.30 in damages,
- b. \$15.31 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in tribunal fees.

38. The applicants are also entitled to post-judgment interest, as applicable.
39. 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.

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Andrea Ritchie, Vice Chair