



# Civil Resolution Tribunal

Date Issued: August 14, 2024

File: SC-2023-007119

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bell v. Messenger*, 2024 BCCRT 780

BETWEEN:

MARY JONINA MARGRET BELL

**APPLICANT**

AND:

BRADEN MESSENGER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. Braden Messenger agreed to purchase a property from Mary Jonina Margret Bell. Ms. Bell says Mr. Messenger rescinded the parties' contract, and that he agreed to pay her \$1,225 for the rescission. She claims this amount.

2. Mr. Messenger does not dispute that he rescinded the parties' contract. However, he says he should not have to pay the rescission amount because Ms. Bell or her agent misrepresented the property's condition.
3. Both parties are 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 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
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, neither party requested an oral hearing, and there are no significant credibility issues. I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 court.
7. Where permitted by CRTA section 118, 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 whether Mr. Messenger must pay Ms. Bell \$1,225 for rescinding the parties' contract.

## EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Ms. Bell must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. On May 18, 2023, the parties entered into a Contract of Purchase and Sale (CPS) for the purchase of Ms. Bell's property. The CPS set out a purchase price of \$490,000. The CPS also said that if Mr. Messenger, as the buyer, exercised his right to rescind the CPS under section 42 of the *Property Law Act* (PLA), he would pay \$1,225 to Ms. Bell within 14 days. It is undisputed that Mr. Messenger did not view the property before agreeing to the CPS.
11. On May 21, 2023, Mr. Messenger provided a Notice of Rescission (NOR) to Ms. Bell. Mr. Messenger says that he rescinded the contract because when he viewed the property, he discovered that Ms. Bell or her listing agent misrepresented its condition. Specifically, Mr. Messenger says that before he made the offer that formed the basis for the CPS, Ms. Bell or her agent added photographs to the property's online listing that had been virtually staged and significantly altered, without including a disclaimer or notation. Mr. Messenger says these photographs constitute a misrepresentation, and so the CPS is void.
12. Mr. Messenger provided the listing photographs in evidence, as well as photographs he took when viewing the property a few days after Ms. Bell accepted his offer. I find this evidence shows that the listing photographs were significantly altered, in addition to being virtually staged with different furniture. For example, the listing photographs were clearly edited to remove a large area of peeling paint in one bedroom. Mr. Messenger says that these edited photographs induced him to enter the CPS at the purchase price the parties agreed to.
13. Ms. Bell does not dispute that the listing photographs were edited. However, she argues that by signing the NOR, Mr. Messenger agreed to pay the rescission amount. The NOR says that Mr. Messenger is exercising his right to rescind the CPS under

PLA section 42, and acknowledges that Mr. Messenger must pay Ms. Bell 0.25% of the purchase price under section 6 of the *Home Buyer Rescission Period Regulation* (HBRPR). Ms. Bell says that Mr. Messenger could have let his offer lapse by not removing the subjects to it, with no penalty, but that he chose to rescind it under the PLA and pay the rescission amount.

14. The difficulty for Mr. Messenger is that neither the PLA nor the HBRPR includes an exemption from the requirement to pay the rescission amount if the property has been misrepresented. While a party to a contract may, at common law, rescind a contract because of a material misrepresentation by the other party, that is not what Mr. Messenger did in this case. Instead, by signing the NOR, Mr. Messenger specifically acknowledged that he was rescinding the contract under PLA section 42. The HBRPR is clear that for this type of rescission, the buyer must pay the seller 0.25% of the purchase price. Mr. Messenger acknowledged this obligation by signing and delivering the NOR. So, I find that I do not need to determine whether Ms. Bell materially misrepresented the property's condition, because Mr. Messenger agreed to pay the rescission fee in any event.
15. So, I order Mr. Messenger to pay Ms. Bell the claimed \$1,225 as required by the NOR. Under the *Court Order Interest Act*, Ms. Bell is entitled to pre-judgment interest on this amount from June 4, 2023, 14 days after the NOR, to the date of this decision. This equals \$73.84.
16. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Bell was successful, I find she is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I make no order for them.

## **ORDERS**

17. Within 30 days of this decision, I order Mr. Messenger to pay Ms. Bell a total of \$1,423.84, broken down as follows:

- a. \$1,225 in damages,
- b. \$73.84 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

18. Ms. Bell is entitled to post-judgment interest, as applicable.

19. This is a validated decision and order. Under CRTA section 58.1, 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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Alison Wake, Tribunal Member