

Citation: *Steele v. Habitat for Humanity Yukon Society*,  
2024 YKSM 8

Date: 20241223  
Docket: 23-S0063  
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**  
Before His Honour Chief Judge Cozens

TIFFANY STEELE

Plaintiff

v.

HABITAT FOR HUMANITY YUKON SOCIETY

Defendant

Appearances:  
Tiffany Steele  
Lenore Morris

Appearing on her own behalf  
Counsel for Defendant

**REASONS FOR JUDGMENT**

[1] Tiffany Steele, the Plaintiff in this action, is suing the Defendant, Habitat for Humanity Yukon Society (“Habitat”) for \$25,000, plus costs, in order to recover monies she paid to Habitat for the purchase of a home at #7-18 Bailey Place in Whitehorse (the “Home”), the sale of which was not completed.

[2] The Plaintiff’s position is that Habitat had promised to refund her all the monies that she had paid towards the purchase of the Home in the event that the sale was not completed. Further, the Plaintiff asserts that the original monetary amount of the mortgage for the Home that she was responsible for, pursuant to the agreement between herself and Habitat, was effectively doubled by Habitat.

[3] Habitat's position is that any such representation that the Plaintiff would get these monies returned to her was either not made, or if made, was not authorized, and as such, not binding and without any legal merit. Although there was an agreement that any monies the Plaintiff had paid towards the purchase of the Home would be credited towards the purchase price, as the Plaintiff did not purchase the Home, there was nothing to apply the credit towards.

[4] In the Reply to the Claim, Habitat asserts that the change to a single mortgage from a two-mortgage model did not adversely affect the Plaintiff, as the size of the zero percent interest loan is based on the appraised value of the Home.

### **Issue**

[5] The primary issue is whether the Plaintiff is entitled to receive back the monies she had paid in "rent" that was to go towards the purchase price of the Home, based upon representations made to her by the Defendant.

### **Evidence**

#### *Tiffany Steele*

[6] The Plaintiff and Habitat began discussions in November 2019 about the Plaintiff entering into an agreement to purchase a home through Habitat. The Plaintiff states that an agreement was reached that she could purchase the Home on terms which required her to be responsible for a mortgage on the Home in the amount of \$206,211, and that Habitat would be responsible for a second mortgage on the Home, called a Silent Mortgage.

[7] The Tenancy-At-Will Agreement between the Plaintiff and the Defendant dated September 1, 2020 (the “Tenancy Agreement”), required the Plaintiff to pay \$1,100 per month (defined as “Rent”) which was to be applied to the purchase of the Home upon the closing of the purchase. There is nothing in the Tenancy Agreement as to the amount of the purchase price, and nothing about what was to happen to monies paid as Rent if the purchase of the Home was not completed. While Clause B in the Background section makes reference to a Contract of Purchase and Sale, there is no such Contract attached to the Tenancy Agreement. It is my understanding that this was documentation that was to be prepared at a future date, after the Home had been appraised, a matter that took considerably longer than originally anticipated.

[8] The Plaintiff’s understanding is supported by a text message between herself and Marney Paradis, a representative of Habitat, dated August 31, 2020, which reads in part:

4) until we get the appraisal done we can’t sell it to you, but it is a “tenancy at will” agreement. So the rent that you will pay will be taken off the total mortgage payment.

5) your total mortgage payment that you will be paying on is \$206,211. The remainder is silent and held by Habitat.

[9] As part of the agreement for the purchase of the Home, the Plaintiff was required to, and did, put in a minimum of 500 hours of her own effort into the Home as “sweat equity”, as well as utilizing leftover materials from other projects to reduce the cost of the Home build.

[10] The Plaintiff states that it was her understanding that the Tenancy Agreement was to be short-term only, and that the necessary documents to complete the purchase would be completed within weeks. In fact, it took over two years for her to be presented with the documentation to complete the purchase of the Home.

[11] The Plaintiff testified that she was told on numerous occasions, including at the time that she signed the Tenancy Agreement, that if she did not complete the purchase of the Home she would have the monies she had paid in “Rent” returned to her. She states that she relied on the promise that she could get her money back when deciding to sign the Tenancy Agreement.

[12] The Plaintiff moved into the Home in September 2020. She continued to pay a monthly amount of “rent” which was changed to bi-weekly payments in February 2021 of \$425, \$900 a month for August and September 2021, and then bi-weekly payments of \$450 in October 2021, in order to accommodate her financial situation. She states that she paid a total of \$32,175 in “Rent” under the Tenancy Agreement towards the purchase of the Home by the end of May 2023.

[13] The Plaintiff was provided with a Contract of Purchase and Sale in January 2023 (the “Final Contract”). To her surprise, the purchase price for the Home was presented as \$384,650, after crediting the Plaintiff with the \$26,350 she had already paid in “Rent”. The Final Contract was unsigned as the Plaintiff decided not to complete the purchase of the Home.

[14] After being presented with the Final Contract, the Plaintiff asked several questions. In an e-mail dated February 9, 2023, from Susan Graves, Board Chair of Habitat, to Lenore Morris, present counsel for Habitat in this proceeding, and forwarded to the Plaintiff by Serge Lamarche, who was handling the sale transaction, it states that the two-mortgage model that the Plaintiff and Habitat had agreed to was no longer, as of recently, able to be used. The Plaintiff was not informed of this until she was provided the Final Contract.

[15] Excerpts from this letter are as follows:

2 [Plaintiff]...We were also told that we were only responsible for the first Mortgage unless we sold. We were not informed about a change in agreement until we were given our contract of purchase and sale.

[Susan Graves] When Miss Steele first became a Habitat Partner Family approximately 3 years ago, the board was working from a 2 mortgage model and at that time they were working from the premise of the first mortgage being what the cost of the build was. However, Habitat Canada clearly let us know that the 2 mortgage model is no longer acceptable and we are not able to use it. This change occurred recently, which is reason she was only informed at the time of me providing her the paperwork and contract for purchase of sale.

Miss Steele is receiving a home with a zero percent mortgage and no down payment and will never have to pay more than 30% of her gross income.

...

Miss Steele also has the option to vacate the premises by May 1, 2023 and **we will reimburse her the money she has paid towards her mortgage** minus any repair costs to bring it to a standard for a future homeowner (not including condo fees). (Emphasis mine)

[16] By e-mail correspondence from Ms. Morris to Lamarche, Lang & Barrett LLB Law Group (“Lamarche”), dated April 14, 2023, the Plaintiff was not required to vacate the Home by May 1, 2023.

[17] By e-mail from Lamarche to Ms. Morris dated May 5, 2023, the Plaintiff requested to have the Tenancy Agreement continue until September 30, 2023, with an agreement to only seek reimbursement of the “rent” monies paid under the Tenancy Agreement up to May 31, 2023.

[18] Ms. Steele was advised by letter dated May 24, 2023, from Susan Graves as Board Chair for Humanity, that the Board accepted her decision to end the purchase agreement and agreed to allow her to remain in the Home until September 30, 2023, with the Plaintiff paying the same amount she had been paying under the Tenancy Agreement. The Plaintiff was offered \$10,000 to compensate her for the 500 hours minimum sweat equity she had put into the Home. There was no mention in the letter of any reimbursement of the monies paid as “Rent”, nor of any repairs required to bring the Home up to an acceptable standard.

[19] In her response to Habitat, the Plaintiff reiterated her understanding that she had been promised to have all the monies which she had paid in “Rent” under the Tenancy Agreement returned to her, and stated: “Being told that I would be given all my money back that I had paid towards my mortgage was a key factor in my decision to end the agreement with HFHY”.

*Susan Graves*

[20] Ms. Graves testified that she had been a Board member of Habitat since 2015, becoming Chair of the Board in 2019. She said that Ms. Paradis was Executive Director of Habitat in 2019 and 2020 until being replaced in 2021 by Suzanne Greening. Ms. Graves stated that her role was to bridge the gap between families en route to home ownership.

[21] Ms. Graves met the Plaintiff in 2019 during the application process. She stated that the Tenancy Agreement was signed at her own home in 2020, and that she is not sure why Ms. Paradis signed it.

[22] Ms. Graves stated that the Tenancy Agreement was intended to get the Plaintiff into the Home as quickly as possible, and to fill the gap between the time the Plaintiff was able to move into the Home until title for the Home was able to be transferred to the Plaintiff. She stated that this was a consistent practice with other families and homes.

[23] Ms. Graves first testified that she never had a discussion with the Plaintiff about the Plaintiff not purchasing the Home, and that she never promised the Plaintiff that she would get the “Rent” monies she paid back if the Home purchase was not completed. Ms. Graves, still in direct examination, later testified that she may have told the Plaintiff that she would be reimbursed the monies she had paid under the Tenancy Agreement if the sale of the Home was not completed. She said that this may have been because she was frustrated and she just wanted the purchase to be finalized.

[24] Ms. Graves stated that she did not have any authority from the Board to make this statement to the Plaintiff, and, frankly, had forgotten that she may have made it. Ms. Graves said that she just wanted the Plaintiff to purchase the Home. Ms. Graves stated, however, that she did not recall telling the Plaintiff at any time that she would get her money back. Ms. Graves stated that she made a mistake when she wrote what she did in the February 9, 2023 correspondence to Ms. Morris.

[25] Ms. Graves explained that the delay in providing the Plaintiff with the Final Contract was due to construction and documentation issues related to the condominium development of which the Home was a part.

[26] Ms. Graves testified that the First Mortgage is the “Cost to Build” value and the second mortgage is the difference between the first mortgage and the fair market value of the Home. She said that the understanding was that where a second mortgage existed, the homeowner had to pay this off if they sold the home. In September 2022, Habitat was advised by a representative of Habitat Canada that Habitat could not do a two-mortgage deal with Habitat holding the silent mortgage.

[27] Ms. Graves agreed that the July 19, 2011 Interim Rental Agreement document, wherein it states:

*In the event the future homeowner does not sign a mortgage with Habitat for Humanity Yukon any rental payments will not be reimbursed*

was not provided to the Plaintiff or discussed with her.



[28] Ms. Graves testified that the \$10,000 previously offered to the Plaintiff by Habitat was in recognition of the Plaintiff having put at least 500 hours of sweat equity into the Home, which Habitat was prepared to compensate her for at the rate of \$20 per hour.

### **Analysis**

[29] I find the Plaintiff to be a credible witness who provided reliable evidence. She provided considerable evidence to support her position. I am satisfied that the Plaintiff was advised by Ms. Graves on more than one occasion that she would receive the money she paid as “Rent” under the Tenancy Agreement returned to her if the purchase of the Home was not completed.

[30] Ms. Graves’ evidence was equivocal on this point, denying that she had ever told the Plaintiff this, but acknowledging that, while she had no recall of doing so, she may have. Although Ms. Graves stated that she erred in writing to Ms. Morris on February 9, 2023, that the Plaintiff would have the “Rent” monies returned to her, I find it hard to believe that this came out of nowhere. Rather, I find that this was simply written confirmation to legal counsel of what Ms. Graves had in fact told the Plaintiff.

[31] While I note that the February 9, 2023 communication was not in correspondence to the Plaintiff or her lawyer, but was correspondence between Ms. Graves on behalf of Habitat and Habitat’s counsel, to me it is a reflection of what Ms. Graves had represented to the Plaintiff, and is corroboration of the evidence of the Plaintiff that she had been promised reimbursement of the funds paid in “Rent” under the Tenancy Agreement. I find that any other interpretation does not accord with logic and common sense.

[32] The Plaintiff testified that she relied on the representation by Ms. Graves that she would receive this “Rent” money back, in deciding not to complete the purchase of the Home, and I accept her evidence on this. As such, there was a representation by Ms. Graves in her position of Board Chair of Habitat, that the Plaintiff relied on to her detriment. I find the fact that this representation contravened the policy of Habitat, and that it was not authorized to be made by the Board, does not invalidate the representation. The Plaintiff was entitled to rely upon this representation.

[33] I note that the Tenancy Agreement does not have a clause stipulating that this is the entire agreement between the parties and that no agreement reached outside of the Tenancy Agreement is possible.

[34] Therefore, I find that the Plaintiff must succeed in her claim for damages.

[35] With respect to damages, I appreciate the argument that the Plaintiff should not be unjustly enriched by an award that does not recognize the benefit to her of having lived in the Home from September 2020 until August 2023, thus “unjustly enriching” her.

[36] The Plaintiff paid a total of \$32,175 in “Rent”. Therefore, her claim for the maximum allowable of \$25,000 is for \$7,125 less than the total amount of the “Rent” that was paid. Further, there was recognition by Habitat that the Plaintiff had put value into the Home through her sweat equity that was considered as having been worth \$10,000.

[37] If the Plaintiff is credited with the \$10,000 for sweat equity, which provided value to the Home, at no cost to Habitat, that leaves \$15,000 in compensation for “Rent”,

which is less than one half of what the Plaintiff actually paid in “rent”. I also note that the Plaintiff paid the condo fees throughout. It cannot be said that the Plaintiff, if awarded the \$25,000 she seeks in the Claim, was able to live basically for free in the Home for the time that she was there.

[38] I appreciate the positive and commendable purpose of Habitat, and its goal of providing families the opportunity to purchase a home when they would otherwise not be able to do so. This, however, does not alleviate Habitat from legal responsibility for the contracts it enters into and the representations they make.

[39] On another note, I appreciate that the two-mortgage model that was used by Habitat at the time the Plaintiff and Habitat signed the Tenancy Agreement, and that the parties believed they were operating under until September 2022, was something that they were subsequently informed they were not able to do, which is why the Final Contract was drafted and presented to the Plaintiff with the increased mortgage cost.

[40] There is a difference in being initially told that you will be responsible for a mortgage of \$206,211, and then being presented over two years later, without prior explanation, that actually you will be responsible for a mortgage of \$411,650 (less in both cases “Rent” paid towards these amounts). The fact that this was offered as a zero-interest mortgage with payments not to exceed 30 percent of the gross income of the Plaintiff, on its face is likely still a good deal, does not change the fact that this was considerably different than what the Plaintiff had been initially presented with. While the Plaintiff did not need to treat this as a breach of contract in order to decide not to purchase the Home, I can certainly understand why she decided not to purchase it. The

concerns the Plaintiff raised with respect to the condition of the Home, with respect to deficiencies and repairs needed, likely contributed to her decision to not purchase the Home, although I do not consider the condition of the Home as having any bearing on my decision in this case.

[41] Therefore, I award the Plaintiff \$25,000, plus costs. I order pre-judgment interest pursuant to the *Judicature Act*, RSY 2002, c. 128, from June 1, 2023, being the first day of the month after “Rent” payments under the Tenancy Agreement ceased, until the date of judgment, and post-judgment interest pursuant to the *Judicature Act* from the date of judgment.

---

COZENS C.J.T.C.