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Lack of land survey led to lot-size mistake

Kia was looking forward to moving into his house on a corner lot on Burgess Ave in the Beach neighbourhood. Near Kingston Rd. and Woodbine Ave., the home has two kitchens, three washrooms and four bedrooms.

Described as a "great fixer upper," the house went on the market on June 11 with a listing price of \$469,000. It sold to my client, Kia, nine days later for \$481,500 in a multiple-offer scenario.

On the day before closing last month, Kia came into my office to sign the final documents. The first thing I did, as I do with all my purchaser clients, was to review the size and location of the parcel of land he was buying.

Since there was no land survey, I pulled out a copy of the 1886 plan of subdivision and began to sketch the size and location of the lot his house was sitting on. As I pencilled in the lot frontage of 24 feet, Kia said, "Uh oh," in a tone which meant we had a serious problem.

He then showed me a copy of the advertised property listing, which indicates lot dimensions of 36 feet by 96 feet, or a total of 3,456 square feet. However, according to the seller's deed, which I had printed out with my title search, the lot size was only 24 feet by 90 feet, or 2,160 square feet.

The difference was a not insignificant 1,296 square feet, or 37.5 per cent of the promised lot size.

From my office, Kia called his own real estate agent who told him quite properly that the price he paid was still a "good deal" in the current market, and if he liked the house he should buy it despite the discrepancy.

In the end, after much soul searching, my client realized that when he eventually sold the house, he would have to advertise the correct and smaller lot size. He decided he did not want the house at the full contract price, and the seller refused to lower it. Kia instructed me to terminate the transaction and get his deposit back.

I explained that the contract he signed described the lot dimensions as "more or less." Under Ontario law, this typically allows for a minor discrepancy sometimes said to be in the vicinity of 10 per cent. But based on a Court of Appeal decision dating back to 1910, a court will only interfere to void a contract if the difference in lot size is so great as to raise the presumption of "gross mistake."

Ultimately the seller's lawyer was very co-operative and agreed with our position. The sellers approved the return of Kia's deposit and agreed to compensate him for his losses and legal costs in the aborted transaction. Last week, the sellers and buyer had signed releases and I assume the property will soon be back on the market advertising the correct dimensions.

Kia encouraged me to write about his case in this column as a lesson to homebuyers. When the smoke had cleared, I called the salesperson who had assisted the listing agent and was responsible for publishing the erroneous description. I asked him how the lot size came to be shown as 36 feet by 96 feet.

"I think my client measured it with a tape measure," he told me. "I didn't know I was supposed to verify it with MPAC (the Municipal Property Assessment Corp.)."

I'm sure it was an expensive and embarrassing lesson, and that he now knows that property sizes must always be verified with MPAC or by reviewing the seller's title deed, or preferably, by examining an up-to-date land survey.

Unfortunately, in this case, there was no land survey for the parties to use in verifying the lot size.

I've frequently written in this column that in my view, the land survey is the most important document in a real estate transaction. Kia's purchase on Burgess Ave. is a textbook example of why surveys are so important and why title insurance, as valuable as it is, is never a substitute for a proper land survey.

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