



Civil Resolution Tribunal

Date Issued: May 23, 2018

File: SC-2017-006854

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Patel v. Wanli*, 2018 BCCRT 201

BETWEEN:

JIGAR JAGDISH PATEL

APPLICANT

AND:

MOHAMMED BASSAL WANLI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION AND JURISDICTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below. The applicant's dispute is that the respondent misrepresented his authority to rent out a bedroom in an apartment, and fraudulently collected a rental deposit of \$1,760.

2. The parties are each self-represented.
3. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules.
 - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the Act. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
6. For the reasons that follow, I have allowed the applicant's claim.

ISSUES

7. The first issue in this dispute is whether I should proceed to hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance.
8. The second issue is whether the respondent must refund the applicant's \$1,760 rental deposit.

EVIDENCE & ANALYSIS

Non-compliance

9. My May 4, 2018 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the tribunal case manager. The details supporting that decision are set out below.
10. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the case manager to contact him with a request for a reply.
11. The respondent filed his Dispute Response on December 8, 2017. The case manager scheduled a facilitation conference call for April 10, 2018 at 1:00 pm. The respondent responded by email that he was available for the call, but did not call in. He responded later that day by email, stating that the code he was provided did not work.
12. The case manager rescheduled the conference call for April 23, 2018. The respondent confirmed that he would participate, but again did not call in. He did not provide any explanation for his failure to attend.
13. On April 25, 2018, the respondent emailed the case manager stating that he was changing his email address due to a security breach. He wrote that he would send

his new email address on May 1, 2018. The respondent has not contacted the tribunal since that time, and has not provided new contact information.

14. The case manager attempted to email the respondent at his old email address on April 26 and 30, 2018, but he did not reply. She also attempted to telephone him three times, but the call was not picked up and there was no voice mail.
15. The case manager then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

Should the tribunal hear the applicant's dispute?

16. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the respondent. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. Given that the respondent provided his contact information in December 2018, and communicated with the tribunal until April 25, 2018, I find it is more likely than not that the respondent was aware of the facilitator's attempts to contact him. The respondent clearly knew he needed to provide the tribunal with his new email address, since he told the case manager he would do so, and yet did not.
17. Tribunal Rule 6 states that all parties in a dispute must make themselves available to participate in the dispute resolution process, and must follow the directions provided by facilitators. Rule 18 says that every party must provide an email address or reasons why they cannot provide an email address. I find that the respondent has not complied with these rules.
18. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:

- a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
19. First, this claim does not affect persons other than the parties involved in this dispute.
 20. Second, because the respondent failed to participate in the scheduled facilitation conference calls, his non-compliance occurred before any facilitation could occur, and prevented any substantive discussions between the parties. As such, the respondent effectively abandoned the process after providing a response.
 21. Third, given the facilitator's attempts at contact and the respondent's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
 22. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of his non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to him.
 23. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.

24. In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
- a. the extent of the non-compliance is significant;
 - b. the applicant is not prejudiced; and
 - c. the need to conserve the tribunal's resources.

Refund of Rental Deposit

25. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
26. Where a respondent has failed to comply with the tribunal's directions as required, as is the case here, an adverse inference may be drawn against that respondent. This means that if the person or organization refuses to participate, it is generally assumed that the other party's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default and the respondent's liability is assumed.
27. The applicant says he responded to the respondent's advertisement to rent a bedroom in an apartment. He says that after viewing the apartment on October 13, 2017, he signed a handwritten rental agreement and provided \$1,760 for 2.5 months as a deposit at the respondent's request. He says he subsequently learned that the respondent did not have the authority to rent out the room, and that the respondent had rented the room to another person for the same time period.
28. In his Dispute Response form, the respondent admits that he entered into a rental agreement with the applicant, and collected \$1,760 from him as a rental deposit. He says he was engaged in a dispute with his landlord because the landlord had refused to consent to the sublease. He says that dispute was scheduled to be

heard by the Residential Tenancy Branch. The respondent says he did have authority to sublet the bedroom, the dispute with the landlord had nothing to do with him, and the applicant breached the rental agreement by demanding a refund. The respondent also says that while he took a partial deposit from another renter, that rental agreement was never completed.

29. Given the adverse inference against the respondent due to non-compliance, I accept the applicant's evidence that the respondent took the applicant's \$1,760 as a deposit, but failed to rent him the room that the deposit was provided for because he did not have authority to sublet the bedroom. I therefore order the respondent to refund the applicant's \$1,760 rental deposit.
30. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$125 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
31. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)*, as set out below in my order.

ORDERS

32. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$1,895.83, broken down as:
 - a. \$1,760 as a refund of the rental deposit,
 - b. \$10.83 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
33. The applicant is also entitled to post-judgment interest under the COIA.

34. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
35. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member