Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. The Owners, Strata Plan LMS 3990*, 2018 BCCRT 212

B E T W E E N :

Raymond Lee

APPLICANT

A N D :

The Owners, Strata Plan LMS 3990

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. In this small claims dispute, the applicant Raymond Lee rents four storage lockers from the respondent, The Owners, Strata Plan LMS 3990 (strata).

2. This dispute arises because the strata significantly increased the annual rent for the storage lockers in January 2017. The applicant says that there is a lease in

effect that prevents the strata from raising the annual rent more than the Consumer Price Index (CPI). The applicant seeks a partial refund of the rent paid for 2017 to remedy what they say is an overcharge. The strata says that there is no enforceable lease that limits its ability to raise rents. Therefore, the strata says that it was entitled to raise the rent to reflect the current market value of the storage lockers.

3. The applicant is self-represented. The strata is represented by its property manager.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (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. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. The applicant initially brought this dispute as a strata dispute. However, the storage lockers are common property and not strata lots. Therefore, the *Strata Property Act* does not apply and this dispute proceeded as a small claims dispute.

8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

   a. order a party to do or stop doing something;

   b. order a party to pay money;

   c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:

   a. Is there a valid and enforceable lease between the applicant and the strata that limits the strata's ability to increase the rent of the storage lockers?

   b. Did the strata overcharge the applicant for the 2017 rental of the storage lockers? If so, by how much?

   c. Is the applicant entitled to reimbursement of their tribunal fees of $225?

EVIDENCE AND ANALYSIS

10. The strata is a high-rise residential strata in the lower mainland. The strata's common property includes 38 storage lockers that the strata rents out to the owners of the units of an adjacent commercial strata. The applicant operates restaurants in the adjacent strata.

11. As of January 2017, the applicant rented four storage lockers from the strata, numbered 17, 18, 21 and 28. The applicant uses the storage lockers to store food and supplies. Three of the storage lockers currently contain refrigerators or freezers. The applicant has rented at least one of the storage lockers since 2000.

12. Both parties gave evidence and made submissions about the enforceability, validity and current applicability of various agreements made prior to December 1, 2010.

13. For the reasons that follow, I find that the applicant has failed to prove that the applicant has ever had a written lease for storage locker 17, either before or after December 1, 2010.

14. For the reasons that follow, I find that there are enforceable written leases between the applicant and the strata dated December 1, 2010, for storage lockers 18, 21 and 28 ("leases"). If there were any agreements about these three storage lockers prior to December 1, 2010, the leases explicitly replaced those agreements. For clarity, and to assist the parties moving forward, I find that the leases are the only agreements that govern the applicant's rental of storage lockers 18, 21 and 28 from the strata.

15. Therefore, while I have read all of the evidence and submissions, I find that I do not need to resolve any of the issues raised by the parties with respect to the rental of the storage lockers prior to December 1, 2010.

16. On December 3, 2010, the strata's property manager sent a letter to all of the storage locker tenants enclosing a new lease for them to sign. The letter stated that the purpose of the new lease was to ensure that the strata had an accurate record of who was renting each locker and to ensure that the parties were in agreement about rent and the use of electricity. The new leases were effective as of January 1, 2011. The leases terminate when the applicant sells the commercial strata lot of the adjacent strata. There is no other provision in the leases regarding termination.

17. The applicant has provided unsigned leases for storage lockers 18, 21 and 28. The three leases are identical other than the storage locker numbers and the amount of base rent. The base rent for each storage locker is made up of two amounts: rent for the storage locker itself and rent for the use of electrical power if

the storage locker contains a refrigerator. The leases provide that the base rent that can only increase each year according to the CPI. The initial annual base rents in the leases were as follows:

- 18: $550 – $500 for the storage locker plus $50 for electricity use.
- 21: $450 – $400 for the storage locker plus $50 for electricity use.
- 28: $400.

18. The leases also provide for the payment of additional rent. The strata may charge the tenants for their proportionate share of the expenses associated with the storage lockers, including the actual cost of electricity use. There is no evidence that the strata has ever charged additional rent.

19. On December 8, 2010, the strata's property manager provided the applicant with invoices for storage lockers 18, 21 and 28 in accordance with the terms of the leases.

20. There is no evidence of when the applicant began renting storage locker 17. The applicant did not provide a written lease for storage locker 17.

21. In 2016, the strata charged rent for the storage lockers as follows:

- 17: $602
- 18: $652 – $602 for the storage locker plus $50 for electricity use.
- 21: $602 – $552 for the storage locker plus $50 for electricity use.
- 28: $552.

22. On January 27, 2017, the strata's property manager delivered invoices for the storage lockers as follows:

- 17: $1,000

- 18: $1,300 – $1,000 for the storage locker plus $300 for electricity use.
- 21: $1,000 – $700 for the storage locker plus $300 for electricity use.
- 28: $700

23. The applicant disputed the rent increases and initially only paid the same rent as they paid in 2016 ($2,408). In September 2017, the applicant paid the remaining $1,592 that the strata charged in the 2017 invoices.

Is there a valid and enforceable lease between the applicant and the strata that limits the strata's ability to increase the rent of the storage lockers?

24. The strata submits that there is no enforceable lease between the applicant and the strata for the rental of the storage lockers. The strata raises two legal arguments to support its position.

25. First, the strata submits that section 20 of the *Land Title Act* states that leases longer than three years are unenforceable unless they are registered with the Land Title Office. The strata relies on *Vancouver City Savings Credit Union v. Serving for Success Consulting Ltd*., 2011 BCSC 124.

26. Section 20 of the *Land Title Act* only applies to the enforceability of agreements against third parties. Section 20 of the *Land Title Act* does not impact the enforceability of an agreement as between the parties to the agreement. For example, *Vancouver City Savings* involved a dispute between a party who leased restaurant space in a hotel and that hotel's creditors.

27. As a result, section 20 of the *Land Title Act* and *Vancouver City Savings* do not apply to the enforceability of any agreements between the applicant and the strata.

28. Second, the strata submits that the leases are void and unenforceable because they are unsigned.

29. Section 59 of the *Law and Equity Act* states that a lease of land for more than three years is generally unenforceable if it is not signed. However, there are exceptions to the general rule. In particular, if a party has accepted payment consistent with the terms of an unsigned contract, they cannot later argue that the contract is unenforceable just because it was unsigned.

30. After the strata delivered the leases to the applicant, the strata issued invoices to the applicant consistent with the terms of the leases. The applicant paid the amount set out in the leases.

31. I find that the strata's acceptance of payments from the applicant prevent it from claiming that the leases are unenforceable because they are unsigned. I find that the unsigned leases are valid and enforceable.

Did the strata overcharge the applicant for the 2017 rental of the storage lockers? If so, by how much?

32. Because I have found that the leases are enforceable, the strata is only entitled to increase rent under the leases with reference to the CPI. The leases do not provide for termination of the lease except when the applicant sells their commercial strata lots.

33. The amount of the CPI for 2017 is not in evidence. The strata does not suggest that it calculated the 2017 increases in accordance with the CPI. Rather, the strata says that it was entitled to increase the rent by whatever amount the strata thought the market would bear. I find that the strata's position is an admission that the 2017 increases were not made in accordance with the CPI. I therefore find that the 2017 rent increases were contrary to the terms of the leases.

34. It is not disputed that the applicant has paid a significant rent increase for storage locker 17. However, without evidence of the terms of the agreement about storage locker 17, I cannot conclude that the parties agreed that the rent would only increase according to the CPI as they did for storage lockers 18, 21 and 28. I

therefore find that the applicant failed to prove that the 2017 increase to the rent of storage locker 17 was contrary to the parties' agreement.

35. The strata states that it has, in fact, undercharged the applicant $1,200 for 2017. The strata says that the new rent is $300 per refrigerator and the applicant was only charged for a total of two refrigerators. The strata provided a "fridge audit" dated March 22, 2018 that shows that the applicant has a total of six refrigerators in the storage lockers.

36. The strata has not made a counterclaim against the applicant. Therefore, I only address this argument in relation to the question of whether the strata overcharged the applicant for storage lockers 18, 21 and 28.

37. The leases each state that the written lease is the entire agreement between the parties. The lease has two columns where the parties wrote in whether there was a refrigerator or not in the storage locker. There is nowhere to indicate how many refrigerators are in the storage locker. The lease does not indicate that the base rent for the use of electrical power is per refrigerator. The lease does not state that the strata may charge additional base rent depending on the number of refrigerators in a storage locker.

38. There is no evidence that the $300 charge per refrigerator is additional rent calculated in accordance with the relevant provisions in the lease.

39. Therefore, because the cost of the use of electrical power for refrigerators is part of the storage locker's base rent, I find that the strata may only increase the cost of electrical power in accordance with the CPI.

40. In addition, the strata's "fridge audit" is dated March 22, 2018. There is no evidence of how many refrigerators were in each storage locker in 2017.

41. Therefore, I reject the strata's argument that it undercharged the applicant for the number of refrigerators in the storage lockers for 2017.

42. In summary, I accept the applicant's argument that it was overcharged in 2017 for storage lockers 18, 21 and 28. I reject the applicant's argument that it was overcharged in 2017 for storage locker 17.

43. The 2017 invoices were addressed to two separate corporate entities. The strata does not dispute that the applicant paid the 2017 invoices and that, if there is a refund owing, the applicant is entitled to the refund.

44. Therefore, I order that the strata refund the applicant $1,344, broken down as follows:

- $748 for storage locker 18
- $448 for storage locker 21
- $148 for storage locker 28

45. I decline to order a refund of any of the rent the applicant paid for storage locker 17.

Is the applicant entitled to reimbursement of their tribunal fees of $225?

46. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. While the applicant failed to prove that he is entitled to a refund for one of the four storage lockers, I find that the applicant was the successful party. I find the applicant is entitled to reimbursement of $225 in tribunal fees. The applicant did not claim reimbursement for any dispute-related expenses.

ORDERS

47. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $1,577.98, broken down as follows:

a. $1,344 as a refund for the overcharges of 2017 rent.

b. $8.98 in pre-judgment interest under the *Court Order Interest Act*, and

c. $225 in tribunal fees.

48. The applicant is entitled to post-judgment interest, as applicable.

49. 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.

50. 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.

Eric Regehr, Tribunal Member