



# Civil Resolution Tribunal

Date Issued: July 31, 2018

File: SC-2017-007408

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. BALMORAL INVESTMENTS LTD.*, 2018 BCCRT 407

**B E T W E E N :**

Harjit Gill

**APPLICANT**

**A N D :**

BALMORAL INVESTMENTS LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Michael J. Kleisinger

## **INTRODUCTION**

1. This dispute is about bedbug bites that the applicant says he received during his stay at the respondent's hotel. The applicant seeks \$5,000 for the pain and suffering he says he endured from the bites.

2. The parties represent themselves. The respondent's Vice-President acts for the respondent.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing. I decided to hear this dispute through written submissions.
5. 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.
6. 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; and
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues in this dispute are:
  - a. Is the respondent responsible for the applicant's injuries?

- b. If so, what are the applicant's damages?

## **EVIDENCE AND ANALYSIS**

### *Evidence and Positions of the Parties*

8. The respondent operates a hotel. On June 9, 2016, the respondent hired a pest control company to investigate and address bedbugs found in room 129. The pest control company sprayed room 129 with pesticides on that date and again on June 20, 2018. After the second treatment, the pest control company informed the respondent that the bedbug problem had been properly addressed and there was no need to follow up any further. The respondent says it received no further reports of bedbugs from staff or the many guests who stayed in room 129 after the treatments.
9. On September 4, 2016, the applicant stayed overnight in room 129. On waking the following morning, the applicant found bedbugs in the bed. He took two pictures, each showing one bedbug on what appears to be a bedsheet. Initially, the applicant believed he escaped unscathed. However, within 24 hours, he found many bites on his body. After leaving the hotel, the applicant told the respondent about the bedbugs and the bites he had received. The respondent reimbursed the applicant the money he paid for the room.
10. On learning of the bedbugs in the applicant's room, the respondent closed off room 129 and an adjoining room, in accordance with its usual practice. On September 6, 2016, a pest control company inspected both rooms. In its report, the pest control company found "using magnification device BB eggs and blood found on box spring closest to the door" in room 129, but no evidence of bedbugs in the other room. The company sprayed room 129 on that date and again on September 19, 2016.
11. The applicant says that in the "weeks and months" following his stay at the hotel, over 50 bites appeared on his face, arms, back and legs. He provided the tribunal

with several undated pictures showing numerous bites on his body. He says that the pain and discomfort from the bites lasted 3.5 months. In addition to the pain and irritation, the applicant says that he suffered significant stress, anxiety and loss of sleep. He says that he attended a doctor on two occasions, who prescribed him antihistamine and hydrocortisone for the bites, and Ativan for the associated anxiety. The applicant has not provided any evidence from his doctor or any receipts for the medications.

12. The applicant claims that on returning home from the hotel, he told his landlord about the bites. His landlord had the home professionally inspected for bedbugs. The applicant says the inspector found no sign of bedbugs in the home. The inspector's report is not in evidence. The applicant says that the only logical conclusion is that the hotel room was infested with bedbugs.
13. The applicant claims \$5,000 for his pain and suffering. He says he would have sought more, but for the tribunal's monetary limit of \$5,000.
14. The respondent says that if room 129 had bedbugs prior to the applicant's arrival, it did not know about it. It says it would never have rented out a room to guests where there had been reports of bedbugs. The respondent says that it is possible that the previous guest brought bedbugs into room 129 and that the cleaning staff missed them during their daily inspection. The respondent also suggests it is possible that the applicant may have unknowingly brought bedbugs into the room with him. Based on his knowledge of bedbugs, the respondent's representative says that the applicant's claim that he continued to receive bites for 3.5 months after his stay at the hotel does not make sense, unless there was another source for his injuries.
15. The respondent says that bedbugs are of great concern to it and the hotel industry at large. The respondent provided evidence showing the steps it takes to train employees on how to recognize the signs of bedbugs and the process of dealing with them when found. The hotel's cleaning staff takes various courses on bedbugs and is required to specifically look for evidence of bedbugs when cleaning

the rooms before, during, and after each guest's stay. In the event bedbugs are discovered, the respondent immediately closes off the affected and nearby rooms and hires a pest control company. The respondent also says that it uses special mattress covers to prevent bedbug from appearing in its beds. It says the bed in room 129 had such a cover at the time of the applicant's visit.

16. The applicant claims that the respondent failed to ensure that he was safe from injury when staying at the hotel. The respondent agrees that the applicant's expectation of a safe environment was reasonable, but says that it did not do anything wrong to cause the applicant's injuries.

#### *The Law*

17. For the respondent to be found negligent, the applicant must establish each of the following elements on a balance of probabilities:
  - (a) The respondent owed the applicant a duty of care;
  - (b) The respondent breached the standard of care;
  - (c) The applicant sustained damages; and
  - (d) The respondent's breach of the standard of care caused the applicant's damages, in fact and law.

*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3

18. As the owner of a hotel, the respondent is an "occupier" under the *Occupiers Liability Act* (OLA). Under section 3 of the OLA, occupiers owe a duty of care to ensure those who use their premises are reasonably safe from harm to themselves and their property. As the Court of Appeal found in *Foley v. Imperial Oil Limited*, 2011 BCCA 262 at paragraph 28, the standard of care that an occupier owes to his or her guests under the OLA is one of reasonableness: the reasonableness of the system implemented to safeguard the particular risk on the premises, and the reasonableness of the implementation of that system. The

standard of reasonableness is not perfection and the occupier is not expected to be an insurer of all risks. The test is not whether, using 20/20 hindsight, anything could have been done to prevent the injury, but rather whether the steps taken by the occupier were reasonable in all of the circumstances (*Duddle v. Vernon (City)*, 2004 BCCA 390 at paragraph 16).

### *Discussion*

19. On the evidence, I am satisfied that this is not a case where the occupier knew of an infestation, failed to take steps to address the infestation, and then failed to warn the guests of the infestation. Rather, the respondent properly addressed the bedbug issue that arose in June 2016. There is no evidence that the bedbugs were an ongoing and unresolved issue in room 129 between the June and September complaints.
20. The appearance of bedbugs in room 129 on September 6, 2016 does not, in and of itself, prove that the respondent breached the standard of care (*Simmons v. Yeager Properties Inc.*, 2014 BCCA 201 at paragraphs 7 and 8). The applicant must establish that the respondent breached the standard of care by failing to take reasonable steps to protect him from injury during his stay at the hotel. The applicant has not provided any evidence of what the standard of care is in these circumstances. Specifically, the applicant has not provided evidence or submissions on what sort of system would be reasonable for a hotel to employ to prevent bedbugs from appearing in a guest's room.
21. Based on the evidence provided, I am unable to find that the respondent breached the standard of care. If the respondent had no system in place to deal with bedbugs, it likely would have been negligent. However, the respondent does have a system in place. The respondent has provided evidence of the system it employs to deal with bedbugs, including the training it gives to its staff, the daily inspections it requires staff to perform on each room, and the steps it takes when bedbugs are found. On the evidence provided, I cannot find that the respondent's system is unreasonable in the circumstances and cannot find the respondent breached the

standard of care. It necessarily follows that the applicant has not established the respondent's negligence caused his damages.

22. Even if I had found the respondent breached the standard of care, the applicant did not provide sufficient evidence to support his claim for damages. While I do not doubt the applicant suffered from the bite marks shown in the photographs he provided, he did not provide the tribunal with any evidence from his treating doctors or receipts for the medications he took to support his claim for pain and suffering. If I had been required to assess the applicant's claim for damages, I would have found the applicant did not prove the amount he sought.

*Decision*

23. Having failed to establish the respondent breached the standard of care, I dismiss the applicant's dispute. As the unsuccessful party, the applicant is not entitled to recover the tribunal fees he paid to bring this dispute.

**ORDER**

24. I dismiss this dispute.

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Michael J. Kleisinger, Tribunal Member