



# Civil Resolution Tribunal

Date Issued: October 9, 2018

File: SC-2018-000014

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nagelkop v. 1034212 BC LTD.*, 2018 BCCRT 596

**BETWEEN:**

Sherman Martin Nagelkop

**APPLICANT**

**AND:**

1034212 BC LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. This small claims dispute is about the return of a security deposit for a leased garage.

2. The applicant, Sherman Martin Nagelkop, signed a 1 year lease to rent a double garage from the respondent, 1034212 BC LTD. The applicant says that about 3 months later, the respondent informed him he had to vacate the premises because the lease violated City bylaws.
3. The applicant seeks a return of the \$175 security deposit and \$60 for moving expenses. He also seeks \$1,800 in damages for the price difference between the original leased garage and the replacement space he rented.
4. The respondent says it does not owe damages or moving expenses because it is the applicant's fault that he had to move. The respondent says the City believed the applicant violated noise bylaws, as well as bylaws against using the space for business purposes. The respondent also says it is entitled to keep the security deposit as compensation for unpaid rent from July 2017.
5. The applicant is self-represented. The respondent is represented by its principal, Dino Chand.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

8. 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.
9. 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**

10. The issues in this dispute are:
  - a. Is the applicant entitled to a refund of his \$175 security deposit?
  - b. Is the applicant entitled to \$60 in moving costs?
  - c. Is the applicant is entitled to \$1,800 in damages for the broken lease?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The parties agree that they signed a lease agreement on March 18, 2017. The lease document is entitled "Storage Agreement". It says the applicant would rent garage #2 from March 18, 2017 to March 31, 2018, for \$350 per month. The lease says the applicant agreed that the premises would be used for storage and furniture repair only.

13. The applicant provided a garage rental deposit of \$175.
14. The garage is adjacent to a residential building occupied by tenants. Mr. Chand says that after the applicant started using the garage, some tenants complained to him and to the City about the applicant blocking parking stalls and using noisy power tools. Mr. Chand says the applicant caused his own eviction by breaching the City's noise and commercial use bylaws.
15. The applicant says Mr. Chand knew when he signed the lease that the applicant would use the garage for his hobby of furniture repair. He says Mr. Chand was negligent in not ensuring that this lease was consistent with local bylaws. He says this negligence resulted in his need to move.
16. Based on the evidence before me, I find the respondent is responsible for the applicant's eviction. The text messages provided by the respondent show that in early June 2017, a tenant complained about the applicant parking at the back of the building and blocking his car. Krista, an employee of the respondent, replied to the tenant on June 13 and said the respondent would be giving the applicant notice to vacate the garage unit, and the respondent was just waiting for some paperwork from the City.
17. Mr. Chand emailed the applicant on June 22, 2017 to tell him about the eviction. The email said there were 2 reasons for the eviction: noise complaints related to use of heavy machines such as saws, and the applicant's blocking of parking behind the building. The email said that for these reasons, the applicant must vacate the property.
18. As summarized above, the lease agreement specifically allowed for "furniture repair" in the garage. There was no prohibition on the use of power tools such as saws. The noise complaints appear to have come from the respondent's own residential tenants. I also note that a key issue highlighted in the June 14, 2017 letter from the City bylaw officer is that the respondent was not entitled to rent out the garage for non-parking purposes. The bylaw officer cited the bylaw requiring

building owners to provide off-street parking. She specifically said that all parking must be returned to its intended use.

19. This letter establishes that the respondent was not entitled to rent out the garage for any purpose other than parking. This was reaffirmed in a June 15, 2017 email from the bylaw officer, which said the respondent had a license to operate a rental building, not to lease the tenant parking for another activity, and that the respondent was required to provide off-street parking for its residential tenants. Based on this evidence, I agree with the applicant that the respondent ought to have investigated this prior to signing the lease, and that its failure to do so led the breach of the lease.
20. Mr. Chand said the respondent rented out an adjacent garage space for storage without incident, and that the City is aware of this. However, I am not persuaded by this argument because he provided no evidence of the City's acceptance of that rental. Rather, the City's June 14, 2017 letter said that the respondent must restore all parking to its intended use by June 30, 2017, which would suggest that no rentals of garage spaces for non-parking purposes are permitted.
21. Finally, Mr. Chand says the applicant was illegally operating a business in the garage. The applicant denies this, and says he was restoring furniture for his own use or to donate to charity. I find that the evidence does not establish that the applicant was operating a business in the garage. In its June 14, 2017 letter, the City bylaw officer said Mr. Chand had confirmed that he was leasing the rear parking garage for a furniture reupholstering business. Thus, the only evidence of business use appears to have come from Mr. Chand. Without any corroborating evidence, I prefer the applicant's statement that he was only repairing furniture as a hobby.
22. For these reasons, I find that the respondent is responsible for breaching the garage lease.

## **Remedies**

23. The applicant requests the return of his \$175 security deposit. Mr. Chand agrees that the garage was left clean and undamaged, but says he is entitled to keep the security deposit as payment for July 2017 rent. The evidence indicates that the applicant moved out of the garage by July 17, 2017, but did not pay any rent for that month.
24. I find the applicant is entitled to the security deposit. The new lease he provided show that he rented another space starting on July 1, 2017. This was reasonable in the circumstances, since he was told in the respondent's June 22, 2017 email that he might have to vacate the garage by June 30, 2017.
25. For this reason, and because the respondent breached the lease, I find the applicant is entitled to the \$175 security deposit. While the applicant used the garage until July 17, I find that the cost of that use is set-off by the fact that he had to rent a second space for the month of July.
26. I also find the applicant is entitled to the claimed \$60 for moving expenses such as truck fuel. While he did not provide receipts to support that claim, I find the expense was foreseeable upon the breach of the lease, and the amount is reasonable in the circumstances.
27. The applicant also claims \$1,800 in damages for the respondent's breach of the lease. He provided evidence that his new rental space cost \$200 more per month than the garage. He claims this amount for the 9 months of the lease that remained after June 30, 2017, for a total of \$1,800.
28. I find the applicant is not entitled to any amount of damages for the breach of the lease. While I accept that the eviction was frustrating and inconvenient, he has not provided evidence to establish that it was necessary to spend \$200 more per month. He did not provide evidence such as dimensions or address to establish that the spaces were equivalent.

29. I am not particularly persuaded by the Craigslist advertisements provided by the respondent showing cheaper garage rentals because most of these appear to be smaller, not near the original space, and not suitable for furniture storage and repair. However, the burden is on the applicant to prove that it was necessary to spend \$550 per month to obtain an equivalent space, and I find he has not done so.

### **Summary**

30. The applicant is entitled to \$175 as a refund of the security deposit, plus \$60 for moving expenses. He is also entitled to pre-judgment interest under the *Court Order Interest Act (COIA)*, as set out in my order below.
31. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute he is entitled to reimbursement of \$125 in tribunal fees. The applicant also claims \$26 in dispute-related expenses. The applicant provided receipts to support this amount, so I find he is entitled to reimbursement of \$26.

### **ORDERS**

32. I order that within 30 days of the date of this decision, respondent pay the applicant a total of \$389.08, broken down as follows:
- a. \$235 for the security deposit and moving expenses,
  - b. \$3.08 in pre-judgment interest under the COIA, and
  - c. \$151 for tribunal fees and dispute-related expenses.
33. The applicants are 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.

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Kate Campbell, Tribunal Member