



Civil Resolution Tribunal

Date Issued: October 2, 2018

File: SC-2017-006403

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lumby Drugs Ltd. v. Campbell et al*, 2018 BCCRT 580

BETWEEN:

Lumby Drugs Ltd.

APPLICANT

AND:

Laura Campbell and LUMBY'S HEALTH FOOD STORE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a commercial property rental contract.

2. The applicant, Lumby Drugs Ltd. (Lumby Drugs), owns a commercial property. Lumby Drugs seeks payment of \$2,100 for claimed outstanding rent, plus \$2,000 to repair floors and replace or repair display cases.
3. The first respondent, Laura Campbell, says she is not liable for any rent or repairs because she was never a party to a commercial rental agreement with Lumby Drugs.
4. The evidence before me shows that neither the original nor the amended Dispute Notice was served on the respondent Lumby's Health Food Store. Rule 69 says a Dispute Notice is invalid if not provided to a respondent by the deadline on the Dispute Notice, unless the Civil Resolution Tribunal (tribunal) extends that deadline. No extension was requested or issued in this dispute. As a result, I find the Dispute Notice is invalid against Lumby's Health Food Store. The applicant is not entitled to any remedy against Lumby's Health Food Store in this dispute.
5. Lumby Drugs is represented by its principal, Gary Green. Ms. Campbell is self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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 issue in this dispute is whether Ms. Campbell is liable for outstanding rent or damage to the applicant's commercial property.

POSITIONS OF THE PARTIES

11. The parties agree that Lumby Health Foods¹ operated a restaurant in the commercial property owned by the applicant. Lumby Health Foods vacated the property in August 2017.
12. Mr. Green says Ms. Campbell rented the property, and failed to give notice before leaving. He says Ms. Campbell owes 2 months of rent. He also says there are large portions of flooring missing, as well as some fixtures including sinks, countertops, and electrical equipment.
13. Mr. Green says that while there was never a formal rental agreement with Ms. Campbell, she was the renter. He says he saw her in the restaurant a number of

¹ While the amended Dispute Notice referred to Lumby's Health Foods, the cheques show the name Lumby Health Foods. I therefore use that name in my reasons.

times. He says the municipal business license for Lumby Health Foods shows Ms. Campbell's address. Mr. Green also says Ms. Campbell and her husband signed cheques for Lumby Health Foods, and that those cheques had her name printed on them as account-holder. Mr. Green says that as the rent-payer, Ms. Campbell is liable for the unpaid rent and damage.

14. Ms. Campbell says she was not an owner of Lumby Health Foods, and never rented property from the applicant. She says her address was used by Lumby Health Foods only for collecting mail. She says she was never an account holder for their utility accounts or bank accounts, although she had signing authority.

REASONS AND DECISION

15. 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.
16. I find that the applicant has not met the burden of proving that Ms. Campbell is liable to pay for outstanding rent or damage to the commercial property. Based on the cheques provided in evidence, I accept that Ms. Campbell had some authority over Lumby Health Foods' bank account. However, the applicant did not provide any evidence about the parties or terms of the lease agreement under which Lumby Health Foods occupied the commercial property. For example, he did not indicate who initially viewed the property, negotiated the rent, agreed to move, or agreed to pay rent. He did not indicate any of the terms under which the applicant agreed to allow Lumby Health Foods to move in, or who agreed to those terms on behalf of Lumby Health Foods.
17. Presumably there was no written rental contract, as none was provided in evidence. However, the fixed monthly rent payments deposited into the applicant's bank account of monthly rent show that at some point, there was at least a verbal agreement about the key terms of the rental. There is no evidence before me about those terms, or who agreed to them.

18. There is no evidence before me indicating that Ms. Campbell ever agreed to pay rent on the commercial property. Rather, Mr. Green admits she was not a party to a formal rental agreement. There is no evidence about whether the lease was indefinite or fixed-term. There is no evidence before me about whether the rental agreement, whether written or verbal, required notice before termination. For these reasons, there is no basis upon which I can conclude that anyone owed the applicant rent, including Ms. Campbell.
19. For the same reason, there is no basis upon which I can conclude that Ms. Campbell, or anyone, owes the applicant money for property damage. There is no evidence about what condition the property was in when Lumby Health Foods moved in, and no evidence of an agreement about who would be responsible for repairs or remediation upon move-out. I note that commercial rentals are not subject to the provisions of the *Residential Tenancy Act*, but rather are entirely governed by agreements between parties.
20. I also note that the applicant has not provided any evidence, such as invoices for labour or supplies, to support his claim that the alleged damage to the property is worth \$2,000.
21. For these reasons, I find that the applicant, who bears the burden of proof, has not established that Ms. Campbell is liable for outstanding rent or property damage.
22. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss its claim for reimbursement of tribunal fees and dispute-related expenses. The respondent did not pay any fees or claim dispute-related expenses.

ORDERS

23. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member