



Civil Resolution Tribunal

Date Issued: November 26, 2018

File: SC-2018-000549

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anthem St. Johns Holdings Ltd. v. Lagadyn et al*, 2018 BCCRT 761

B E T W E E N :

Anthem St. Johns Holdings Ltd.

APPLICANT

A N D :

William Joseph Alan Lagadyn and Orca Imaging Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. The applicant Anthem St. Johns Holdings Ltd. (Anthem) owns a commercial building. The respondent Orca Imaging Inc. (Orca) rented a unit (premises) in that building. The other respondent, William Lagadyn, agreed to indemnify the applicant for any amounts owed to Anthem by Orca.

2. The applicant says that Orca owes \$2,285 in rent arrears for the premises. Orca and Lagadyn say that the premises were unsafe and unsatisfactory due to fumes coming from units below, one used by an auto body paint shop and another by a furniture refinishing company. The applicant is represented by one of its employees, Cathy Swaddling. The respondents are represented by Mr. Lagadyn.

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

ISSUE

7. The issue in this dispute is whether the respondents must pay the applicant \$2,285.00 for rent arrears.

EVIDENCE AND ANALYSIS

8. On September 28th, 2015 Anthem, as landlord, entered into a commercial lease with Orca, as tenant. That lease provided that the applicant rented the premises to Orca for one year beginning October 1, 2015. The monthly rent was \$2,500.00 plus tax. Orca paid a security deposit of \$2,100.00. The lease was amended on October 16th, 2015, to provide that Orca would pay no rent for the month of November 2015.
9. The parties entered into a second lease dated September 21st, 2016. Anthem rented the premises to Orca for another year, beginning October 1, 2016. Mr. Lagadyn agreed to indemnify Anthem (pay the debt) if for any reason Orca failed to pay the rent due under the lease. The annual gross rent under this second lease was \$32,400.00 plus tax, being a monthly gross rent of \$2,700.00. Orca indicated that it would not renew at the end of the second lease.
10. Anthem says that Orca made some late rent payments and that a number of Orca's rent cheques were returned due to insufficient funds. Orca made some partial payments of amounts which were less than a full month's rent. At the end of the second lease term, Orca's rent arrears were \$4,385.00.
11. When Orca left the premises at the end of the second lease term, Anthem found the premises to be in acceptable condition. Anthem applied the \$2,100.00 security deposit to the balance of rent owing. In this dispute, the applicant asks for an order that Orca and Mr. Lagadyn pay the remaining balance of \$2,285.00.
12. The respondents have not disputed the amounts owing. Instead, they claim that the premises were affected by noxious fumes coming up from the units below the premises. They says that the fumes were present throughout Orca's time in the

premises, although there is no evidence that Orca mentioned the fumes to Anthem before the end of the second lease term.

13. Anthem says Orca did not mention any problem with fumes until Orca was asked to pay the rent arrears on October 2017. In an October 4, 2017 email to the applicant, Mr. Lagadyn said that Anthem should reconsider its plans to collect the arrears otherwise Worksafe BC might pay a visit and perform air quality tests. Neither respondent has submitted any evidence that Orca complained about the fumes before that date.
14. Regardless of whether the premises were affected by fumes or not, neither Orca nor Mr. Lagadyn has filed a counterclaim seeking damages for problems caused by the air quality. Nor have they presented any evidence to support their claim of poor air quality.
15. I therefore find that there is no legal basis for Orca and Mr. Lagadyn to refuse to pay the arrears of rent. I grant Anthem's claim for payment of the \$2,285 in rent arrears. Orca and Mr. Lagadyn are jointly and severally liable, which means that both are liable to pay the full amount of the debt.
16. 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. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125.00 in tribunal fees. The applicant has not made any claim for dispute-related expenses so I make no order with respect to expenses.

ORDERS

17. Within 30 days of the date of this order, I order the respondents to pay the applicant a total of \$2,441.25, broken down as follows:
 - a. \$2,285.00 as rent arrears,

- b. \$31.25 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125.00 for tribunal fees.
18. The applicant is entitled to post-judgment interest as applicable from the date of this order.
19. 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.
20. 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.

Mary Childs, Tribunal Member