



Civil Resolution Tribunal

Date Issued: December 28, 2018

File: SC-2018-001693

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sun v. 663140 B.C. Ltd. doing business as Premiere Executive Suites – Victoria*, 2018 BCCRT 898

B E T W E E N :

Sonja Sun

APPLICANT

A N D :

663140 B.C. Ltd. doing business as Premiere Executive Suites -
Victoria

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a rental payment. The applicant, Sonja Sun, says that the respondent, 663140 B.C. Ltd. doing business as Premiere Executive Suites –

Victoria, improperly deducted \$336.00 from rent owing to her. The respondent's position is that it was entitled to make the deduction.

2. The applicant is self-represented. The respondent is represented by Rachelle Keeley.

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 respondent must pay the applicant the \$336.00 it deducted from the rental payment.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their positions. While I have considered all of this information, I have referred to only that which is necessary to provide context to my decision.
9. The applicant owned a condominium which she rented to the respondent, who in turn sub-let the suite to guests. The parties entered into a contract entitled “Premiere Suites Furnished Accommodations Agreement” on April 28, 2016. The contract contained clause 10, which stated that the applicant would not inhibit the respondent in performing the services and obligations under the agreement.
10. The contract also contained clause 20, which provided that the applicant would indemnify the respondent from damages arising from a breach of the agreement, gross negligence, willful misconduct or bad faith with regard to her obligations under the contract. This clause specifically contemplates the payment of “reasonable legal fees actually incurred”.
11. Appendix D of the contract contains a request that owners wishing to sell their properties provide the respondent with 30 days of notice before listing. The respondent stated that it “cannot accommodate realtors and potential buyers visiting while there is a guest in the suite”.
12. In September of 2017, the applicant advised the respondent that she had decided to sell the condominium. In a subsequent message, the applicant gave the respondent the necessary notice to terminate the contract.

13. The applicant exchanged email messages with the respondent about obtaining access to the condominium for the purpose of showing it to prospective buyers. The applicant was aware that there was a week in October 2017 when the condominium was not rented out, and wished to access the condominium during that week.
14. There were discussions between the applicant and respondent about possible difficulties with this arrangement due to the duration of an existing guest's stay and the operational requirements surrounding the cleaning of the condominium before the next guest's scheduled arrival. The parties were not in agreement as to whether the dates requested by the applicant could be accommodated.
15. The respondent consulted with a lawyer, who corresponded with the applicant via email. In an October 4, 2017 message to the applicant, the lawyer stated that the respondent "will not take any steps to prevent you from your announced plans to list and show the suite. Thank you for your confirmation that your activities will not inhibit [the respondent] from performing any of the Services" under the contract.
16. The respondent deducted the amount of the lawyer's fees, \$336.00, from its October 2017 payment to the applicant. The parties hold opposing views as to whether the respondent was entitled to make this deduction.
17. It is apparent that the applicant was aware of the difficulty of showing the condominium to prospective buyers when guests were present. I do not find her attempt to do so in the absence of a guest amounted to inhibiting the respondent's ability to perform the services under the contract. I also note that an October 3, 2017 email message described the applicant's request for access to the condominium as impacting the respondent's right to exclusive possession of the suite. However, I also note that the applicant offered to book the suite for her personal use between October 10 and 18, 2017, and to pay for additional cleaning services.
18. The parties made submissions about whether access to the condominium for an appraisal on October 26, 2017 amounted to a breach of the agreement. Based on

the available evidence, it is not clear whether a breach occurred. I do not find it necessary to make this determination, as the account for legal services was dated October 18, 2017. There is no indication that the respondent incurred additional legal fees as a result of the alleged October 26, 2017 breach. I do not find that a breach on October 26, 2017, if one occurred, would permit the respondent to deduct its previous legal fees from the rental payment owing to the applicant.

19. Although the respondent may have preferred that the applicant not have persisted in requesting access to the condominium for real estate showings during a particular time frame, I do not find that her conduct rose to the level of a breach of the contract.
20. Further, I do not find that the applicant engaged in gross negligence, willful misconduct or bad faith. I am satisfied that the requirements of clause 20 of the contract have not been met. While it was open to the respondent to seek legal advice and communicate with the applicant through counsel, the associated legal fees cannot be charged to the applicant as damages under the terms of the contract. The applicant is entitled to reimbursement of the deducted amount of \$336.00.
21. In addition, the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA). Calculated from October 31, 2017, the applicant is entitled to \$4.81 in pre-judgment interest.
22. 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 in tribunal fees. The applicant did not make a claim for dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$465.81, broken down as follows:
- a. \$336.00 as reimbursement for the deduction from the rental payment,
 - b. \$4.81 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.
26. 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.

Lynn Scrivener, Tribunal Member