Civil Resolution Tribunal

Date Issued: February 5, 2019

File: SC-2018-003215

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *HighStreet Accommodations Ltd. v. Simmons*, 2019 BCCRT 136

B E T W E E N :

HighStreet Accommodations Ltd.

APPLICANT

A N D :

Susanne Simmons

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. This is a dispute about damaged property. The applicant, HighStreet Accommodations Ltd., provided furnished accommodations to the respondent, Susanne Simmons, from September 26, 2014 to February 7, 2017 in a 3-bedroom townhouse in Port Moody, British Columbia (unit). The applicant says the respondent caused significant damage to the unit and wants the respondent to pay

$4,333.37 for the cost of repairing the damage. The respondent denies responsibility for the damage.

2. The applicant is represented by an employee or principal, and the respondent is self-represented.

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 118 of the *Civil Resolution Tribunal 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. Some of the evidence in this dispute amounts to a "they said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

5. 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.

6. 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.

7. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

8. Section 4 (f) of the *Residential Tenancy Act* (RTA) says the RTA does not apply to living accommodation provided as an emergency shelter or transitional housing. It is uncontested that this dispute arose through the respondent's provision of transitional housing to the applicant. Therefore, I find the RTA does not apply, and the tribunal has jurisdiction to resolve this dispute.

ISSUES

9. The issue in this dispute is whether the respondent is required to reimburse the applicant $4,333.37 for the cost of repairing damage to the unit.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.

11. The respondent participated in the dispute and provided detailed submissions, but she did not submit any evidence.

12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I find the respondent must pay the applicant $3,236.83 for damage to the unit.

13. It is undisputed that in September 2014 the respondent's home was damaged in a fire and she temporarily moved into the unit. On September 26, 2014, the respondent signed the applicant's Guest Registration Card, which states that as a condition of using and occupying the unit, the respondent assumed all liability for the costs of repairing or replacing any willful or negligent damage or loss caused by the respondent, any other occupants, or any pets. On the same date the respondent signed a document entitled "Housekeeping and maintenance services." That document says that guests are responsible for any damage to the unit and its contents, including excessive cleaning required at the end of the stay. The document says such damage includes pet odours, pet stains, damage to furniture, and excessive hair.

14. The applicant provided an affidavit from one of its senior housekeepers which included photographs she took of the unit on September 24, 2014, before the respondent moved in. These photographs show the unit was clean with no visible major damage to any furnishings. On September 26, 2014 the respondent initialed a Condition of Premises Report (COP) which indicated that the unit was clean and generally in good condition aside from minor scuffs and scratches from wear and tear.

15. The unit is 1300 square feet over 3 levels with 3 bedrooms and 3 bathrooms. The respondent, her sister, and their 2 cats lived in the unit from September 2014 until February 7, 2017. For some of this time an adult son also lived in the unit. The cost of the respondent's stay at the unit was covered by her insurance.

16. It is undisputed that the applicant provided housekeeping services at the unit once every 2 weeks throughout the respondent's stay. The respondent says the applicant also provided deep cleaning services 3 times per year, which the applicant does not dispute. The respondent says that despite many housekeeping and maintenance

visits during her stay, she never received any complaints or notices about problems with the condition of her unit aside from 2 issues unrelated to this dispute. She says the housekeepers complimented her on the appearance and condition of the unit, but she submitted no evidence to support this claim.

17. In contrast, the applicant says there were many problems with the condition of the unit throughout the respondent's stay, including clutter, cat urine, odour and cat hair, which the applicant says it communicated to the respondent on many occasions. The applicant submitted detailed evidence to support this claim, including an email statement from its Housekeeping Scheduling Assistant, an affidavit from one of its senior housekeepers, and numerous housekeeping work orders.

18. On balance, I prefer the applicant's evidence on this point, particularly since it includes observations from several different witnesses on different dates. I also note the documents the respondent signed accepting liability for damage to the unit do not require the applicant to notify the respondent about issues with the suite before her departure.

19. The applicant says that on February 7, 2017, after the respondent moved out, there was extensive damage to the unit. The applicant submitted an affidavit from one of its senior housekeepers which describes the condition of the unit on February 8, 2017 and includes many photographs. The housekeeper said the smell of cat urine was so strong on entering the unit that she and the other 2 housekeepers working on the unit had to wear face masks and protective eyewear. She said the unit was covered in biological stains and much of the furniture was damaged with scratches, stains, and claw marks. She said she had to dispose of the mattress and box spring in the second bedroom despite their protective casings because of the strong odour of cat urine. She said the housekeeping team was required to use its hydroxyl generator to deodourize the unit, which took 48 hours. She said that after inspecting the unit she determined it would take 2 full days to clean the unit.

20. The applicant also submitted an affidavit from its Director of Operations, in which he said 4 of the 6 dining chairs in the unit were irreparably damaged by the cat and the applicant had to replace all 6 chairs to have a matching set. He said the applicant was also required to replace 3 lampshades which were damaged and covered in cat hair.

21. The respondent denies responsibility for the damage to the unit. She says the applicant did not notify her of the alleged damage until February 14, 2017, after the cleaning and repair work was completed, which deprived her of the opportunity to independently assess the condition of the unit. While this may be true, I find the condition of the unit on February 8, 2017 as described in the applicant's evidence is consistent with numerous descriptions of the condition of the unit throughout the respondent's stay. It is also supported by evidence from multiple witnesses. The respondent provided no evidence to support her position.

22. The respondent says the photographs the applicant submitted purporting to show the damage to the unit are photographs of the same room taken from different angles. While there is one duplicate photograph in the applicant's evidence which is labelled as both closet door 2 and closet door 3, I find the remainder of the photographs appear to be labelled correctly, and generally depict the condition of the unit as the applicant describes it.

23. The respondent says the unit was extremely dated and worn out when she moved in, and that much of the damage the applicant describes was caused by previous tenants. However, the respondent signed the COP before she moved into the unit, which describes only minor wear and tear. She also signed 2 separate documents accepting liability for damage to the unit. In these circumstances, I find it was the respondent's responsibility to report any additional damage not stated on the COP to the applicant. There is no evidence she did so. On balance, I find the respondent is responsible for any damage to the unit not captured in the COP.

24. I am satisfied the applicant has established the respondent caused extensive damage to the unit, and that the respondent is responsible for the cost of cleaning and repairing it. The next question is how to quantify the damage.

25. The applicant says it cost $9,213.90 to clean, repair, and replace the furnishings and fixtures in the unit. After considering its own maintenance responsibilities and the Residential Tenancy Branch's depreciation schedule, the applicant reduced the amount of its claim to $5,196.38 plus tax of $335.27. I note that the applicant's invoice says it charged a total of 12 percent tax for PST and GST, but the calculations show the applicant actually charged a total of 6.45 percent tax. The applicant says the respondent paid a damage deposit of $1,198.28, which was deducted from the amount owing. The applicant submitted evidence of the amount of the damage deposit. The respondent says she paid a $350 pet deposit, but it is unclear from her submissions whether that is in addition to the $1,198.28 or included in that amount. I find the weight of the evidence supports the applicant's position on this point. The applicant credited the $1,198.28 security deposit against the amount of its claim, leaving an outstanding balance of $4,333.37.

26. The applicant sent the applicant a revised invoice dated September 1, 2017 for $4,333.37, the amount claimed in this dispute. The invoice includes the following charges:

    a. $400.00 Replacement of 4 dining chairs

    b. $200.00 Replacement of queen box spring

    c. $53.97 Replacement of 3 lamp shades

    d. $1,030.98 Replacement of linens

    e. $1,650.00 Housekeeping service hours (55 hours x. $30/hour)

    f. $540.00 Maintenance & Repair hours (13.5 hours x $40/hour)

    g. $91.43 Furniture Disposal Fee

    h. $380.00 Hydroxyl

i. 850.00 Loss of Rental Revenue (Feb 7-12. 5 nights x $170/night)

27. The respondent disputes the charges for the dining chairs, box spring and lamp shades. She says the vinyl on the dining chairs was thinned, the stain was peeling, and she never used them. However, the applicant's evidence is that the chairs needed replacing because they were damaged by the respondent's cats. The respondent says the box spring was already split when she moved in, but the applicant says the reason it replaced the box spring was because it was soiled with cat urine. The respondent says she never used one of the lampshades and that she was unaware they were damaged, however a failure to notice damage does not relieve the respondent of liability in the circumstances.

28. The respondent says the applicant had plans to upgrade the unit once she vacated, and that some of the charges on the invoice are expenses the applicant would have incurred upgrading the unit regardless of its condition on her departure. The applicant admits it had plans to update the unit but did not provide details. However, the applicant provided detailed evidence of the costs it incurred for which it did not charge the respondent to account for its upgrade of the unit. These include replacing the flooring, sofas, end tables, coffee table, and other chairs. On balance, I am satisfied the applicant has established the respondent is responsible for damage to the dining chairs, box spring and lampshades, which would not otherwise have required replacement.

29. The respondent disputes the applicant's $1,030.98 charge to replace the linens. She says after the first 3 months of her stay in the unit she used her own personal linens, and this is indicated on many of the applicant's work orders, which I accept. However, given my findings about the condition of the unit, even if the respondent was not using the applicant's linens as her bedding, it is reasonable that they would require replacement based on the extent of the odour in the unit. On balance I accept the applicant's charges to replace the linens.

30. The applicant's uncontested evidence is that it took 55 hours of labour to clean the unit after the respondent's departure. However, the applicant says the regular

housekeeping service it provides after guests vacate requires 6 hours of labour, which the applicant does not charge to guests. The applicant admits it overcharged the respondent for 6 hours of housekeeping labour. Therefore, I find the respondent's housekeeping charges on the invoice must be reduced by $180 before tax.

31. The respondent says her stay at the unit was exceptionally long, and that it is reasonable that it would take the housekeepers longer to properly clean her unit after 2.5 years than the unit of a guest who stayed for only a few weeks. However, given my findings about the condition of the unit throughout the respondent's stay, and the fact the applicant provided housekeeping services to the unit every 2 weeks, I find there is no basis to reduce the housekeeping hours on the invoice beyond 6 hours.

32. The respondent also disputes the applicant's charge for maintenance hours and says there were no extraordinary maintenance items associated with the unit. However, the applicant provided detailed evidence to support these hours, and the work described is consistent with the rest of the applicant's evidence about the damage to the unit and the work required to repair it. I find the maintenance charges are substantiated and I accept them.

33. The respondent says regardless of the condition of the unit, the applicant would not have been able to rent out the unit immediately after she vacated because of the applicant's plans to update it. The respondent also says the building in which the unit is located is not always at full capacity. The applicant admits it had planned to upgrade the unit but says the work was delayed because of the time it took to clean the unit. I note the applicant's housekeeping service did not start cleaning the unit until February 8, 2017, so I find the applicant would not have been able to rent out the unit on the night of February 7, 2017. The applicant has provided no evidence of its occupancy rate at that time, or evidence that it had to turn down business because of the condition of the unit. On balance, I am not satisfied the applicant has established a loss of rental income from February 8 – 12, 2017, or that such a loss

was caused by the damage in the unit. I dismiss this part of the applicant's claim and reduce the amount of the invoice by $850 before tax.

34. I find the rest of the charges on the applicant's invoice are substantiated by detailed evidence which is consistent with the nature of the damage to the unit. I find the respondent owes the applicant $3,236.83 in damages. I find the applicant is entitled to pre-judgment interest under the *Court Order Interest Act* calculated from September 15, 2017, which is the date payment of the revised invoice was due.

35. 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. As the applicant was generally successful it is entitled to reimbursement of its tribunal fees in the amount of $175. The applicant has not claimed any dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $3,431.81, broken down as follows:

    a. $3,236.83 for damages to the unit,

    b. $19.98 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

37. The applicant is entitled to post-judgment interest, as applicable.

38. 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.

39. 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.

Sarah Orr, Tribunal Member