



Civil Resolution Tribunal

Date Issued: February 7, 2019

File: SC-2018-006044

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Collister v. Caton*, 2019 BCCRT 148

B E T W E E N :

Graham Collister

APPLICANT

A N D :

Bradley Caton

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute results from the cancellation of a booking for a vacation property. The applicant, Graham Collister, says that the respondent, Bradley Caton, did not honour a rental agreement. As a result, the applicant says he incurred additional expenses and experienced frustration and a loss of a portion of his vacation. He seeks compensation of \$3,000. The respondent admits that he cancelled the

applicant's booking but takes the position that he is not responsible for the damages claimed.

2. The parties are 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* (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.

ISSUES

7. The issue in this dispute is whether the respondent must pay the applicant \$3,000 in damages for the cancelled rental agreement.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. Both parties provided submissions, and the applicant provided evidence in support of his position. While I have considered all of this information, I will refer only to that which is necessary to provide context to my decision.
9. The respondent's property in Desolation Sound, British Columbia was listed on two vacation rental websites. In February of 2018, one of the applicant's family members corresponded with the respondent about the availability of the property for July 28 to August 4, 2018. As there were difficulties with online booking, the applicant sent a hard copy of the completed rental agreement to the respondent.
10. The agreement contemplated a 7-night rental of the property for \$3,650. As required by the agreement, the applicant made an electronic transfer of \$1,900 to the respondent to "make and hold reservation". The remaining amount was due 14 days prior to arrival at the property.
11. On July 10, 2018, the applicant's family member sent an email to the respondent asking for confirmation of the outstanding balance. In reply, the respondent stated that a signed agreement and payment was never received, and the property was no longer available for the requested dates. A subsequent email discussed the refund of the \$1,900 deposit. The applicant says that the respondent told him that he had received the deposit and agreement, but rented the property to another party.
12. The applicant says he had rented a boat in anticipation of his vacation, and could not cancel that contract. He says he found another property to rent, but only for July 31 to August 4, 2018, 3 fewer days than the original rental. He also says that he incurred extra expenses for gas as he had to drive the boat to temporary moorage

while waiting for the new accommodations to be available. The applicant also says that the new accommodations were located approximately 16 kilometres further away, and that he incurred additional fuel expenses travelling into Desolation Sound each day. The applicant asks for an order that the respondent pay him \$1,593.00 for the cost of the boat rental during the 3 days they were unable to use it, and \$500.00 in additional gas expenses. The applicant also seeks \$907.00 in aggravated damages for the loss of enjoyment of 3 days of vacation, and the stress and frustration resulting from the breach of the contract. The damages claimed by the applicant total \$3,000.00.

13. The respondent does not dispute that he did not honour the rental agreement. His position is that he not responsible for any of the damages claimed by the applicant as boat usage and rental has nothing to do with the rental of his vacation property and the applicant had lots of time to reschedule the vacation.
14. Although the respondent suggested that the applicant's deposit and signed agreement were never received, I find that this was not the case. I am satisfied that there was a binding contract between the parties and that the respondent breached the contract by cancelling it. Although the contract contemplates what would happen if the renter cancelled, it does not address the possibility that the respondent would not honour the agreement.
15. The fact that there is no provision that considers the respondent's failure to perform his obligations does not mean that the applicant cannot be awarded damages for non-performance of the contract. Damages for the breach of a contract are intended to put a claimant in the same position that he or she would have occupied had the contract been carried out by both parties (see *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319 at para. 39).
16. I find that the applicant is entitled to damages to put him in the position he would have been in had the respondent fulfilled the agreement. This is so despite the fact that he was able to make alternate arrangements for his vacation. Although the

applicant mitigated his losses, I am satisfied that he still sustained damages as a result of the breach.

17. As evidenced by the email exchanges between the parties, the respondent was aware that the applicant and his family intended to rent a boat and moor it at the property for the duration of their vacation. The applicant entered into a rental agreement for a boat, costing \$3,717.00 for July 28 to August 4, 2018. He was unable to cancel that contract less than 60 days in advance, and that time period expired well before the respondent breached the contract.
18. As noted above, the applicant was unable to obtain replacement accommodations for the entire period of his vacation. Although he paid for the full boat rental, I accept that the applicant was only able to use the boat in Desolation Sound for the 4 days in which the new accommodation was available. The applicant claims \$1,593.00 for the value of the lost days, and I find that he is entitled to this amount.
19. The claimant also claims compensation for the cost of the extra fuel used in moving the boat to temporary moorage and due to the more remote location of the alternate accommodation. Although he initially valued this extra fuel at \$500.00, the applicant now calculates the loss at \$478.85. I find that the applicant's claim for this loss is supported by the maps and calculations in his submissions, and find that the respondent must pay the applicant this amount.
20. The applicant cited case law from other jurisdictions in support of his claim for aggravated damages. He says the \$907.00 he claims represents mental distress and lost vacation days. According to the applicant, the entire vacation was "blemished" by the cancellation of the contract and the need to scramble to make alternate arrangements.
21. As discussed in *Gibson v. F.K. Developments Ltd. et al*, 2017 BCSC 2153 at paragraph 54, aggravated damages involve intangible losses such as pain and suffering, mental distress and emotional shock. They are a form of non-pecuniary damage. They compensate for the manner in which the defendant's conduct

affected the plaintiff. Aggravated damages arise where the conduct of the defendant is particularly poor.

22. While I do not doubt that the applicant was inconvenienced by, and unhappy with, the cancellation of his agreement with the respondent, I do not find that he has proven on a balance of probabilities that he suffered an emotional injury as a result of the respondent's behavior. I also do not find that the respondent's conduct was particularly poor or high-handed. Accordingly, I dismiss the applicant's claim for aggravated damages.
23. I have determined that the respondent must pay the applicant the amount of \$2,071.85 as damages for the breach of the rental agreement. The applicant is also entitled to pre-judgment interest of \$16.55 under the *Court Order Interest Act* (COIA).
24. 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. Although the applicant was not entirely successful, I see no reason not to follow that general rule in this case. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. He did not make a claim for dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,213.40, broken down as follows:
 - a. \$2,071.85 in damages for the breach of the agreement,
 - b. \$16.55 in pre-judgment interest under the COIA, and
 - c. \$125.00 in tribunal fees.
26. I dismiss the applicant's claim for aggravated damages.

27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.
29. 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