Civil Resolution Tribunal

Date Issued: February 22, 2019

File: SC-2018-006428

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Agosti v. Budzey*, 2019 BCCRT 216

B E T W E E N :

Filomena Agosti

APPLICANT

A N D :

Nadia Budzey

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a commercial sub-lease agreement. In 2015, the applicant, Filomena Agosti, sub-leased part of her salon space to the respondent, Nadia Budzey. The respondent ended the sub-lease in June 2018 and left on June 17,

2018. However, the applicant says the respondent failed to give 30 days' written notice together with a full month's payment, as required. The applicant claims $1,050, being rent for July 2018, which she says the respondent owes under the lease agreement.

2. The respondent says that on June 16, 2018 she gave 2 weeks' notice by text, as a courtesy. The respondent says she paid for all of June, and does not owe for July. The respondent submits she was entitled to leave without giving any notice.

3. The parties are each self-represented. For the reasons that follow, I allow the applicant's claims in part.

JURISDICTION AND PROCEDURE

4. 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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.

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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to $1,050, being a month's rent for July 2018, under the parties' commercial sub-lease agreement.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. The parties agree that in 2018 the respondent's monthly rent was $1,050 inclusive of tax. It is undisputed the respondent's last payment was for the June 2018 rent, paid on June 2, 2018.

11. It is also undisputed the respondent texted the applicant on June 16, 2018 to say she was leaving the salon, but did not give a departure date. The respondent says she chose to leave that day, even though she had paid for the entire month of June. The respondent says this amounted to 2 weeks' notice, which she says she gave as a courtesy.

12. The respondent originally denied there was ever any formal lease agreement and said she understood she could leave at any time without giving notice. In her submissions for this decision, the respondent says she does not recall signing the sub-lease agreement but does not deny she signed it. The respondent also says

that she never received a copy of it until the applicant sent it to her in October 2018, long after the respondent left in June 2018. The applicant says the respondent received a copy of it in 2015.

13. I find the evidence shows the respondent signed the sub-lease agreement, which began on March 1, 2015 and continued month-to-month. The sub-lease agreement has the respondent's name handwritten into the spot for "lessee". Significantly, a signature appears beside the respondent's handwritten name, and dated January 26, 2015, on the last page of the sub-lease agreement. This signature appears to be identical to the one on the respondent's June 2018 rent cheque.

14. I find the respondent is bound by the terms of the sub-lease agreement that she signed. Even if the respondent did not obtain a copy until October 2018 is not determinative. Nothing prevented her from asking for a copy after she signed it in 2015, and there is no evidence before me that she did so. The respondent is responsible for complying with the agreement she signed.

15. I note the applicant in part relies on an updated April 2017 agreement that the respondent did not sign. That version has additional phrasing that "a full month's payment is required regardless of the actual start or end date". I do not rely on this unsigned version, which I find the applicant has not proved the respondent agreed to.

16. The signed sub-lease agreement from 2015 states simply that either party may terminate the agreement on 30 days' written notice to the other party. I find the respondent's June 16, 2018 text message to the applicant did not constitute written notice. Certainly, a text message is a written communication, and the respondent's text stated she was leaving the applicant's salon. However, the respondent's June 16 text did not say when the notice was effective or provide her departure date. I find giving notice implicitly requires providing an end date to the contractual relationship. Instead, the respondent simply wrote "I will be leaving" and that she was joining another salon. As noted above, June 16 was the respondent's last day at the applicant's salon, but she did not tell the applicant this, even though the

applicant immediately texted back that she required written notice as required under the agreement and asked “when will your last day be”.

17. On August 10, 2018, the applicant, through her lawyer, demanded one month’s rent for July because written notice had not been provided. I have found the June 16 text was not the required written notice. So, what is the appropriate result where the required notice was not given?

18. The applicant knew the respondent had left as of June 17, because the applicant saw the respondent had taken all of her belongings and she had received the June 16 text. Taken together, I find the applicant had actual notice of the respondent’s departure on June 17. I find the applicant is entitled to 30 days’ notice from that date, namely to July 17. I therefore find that the respondent owes for the first two weeks of July 2018 under the agreement, namely $525. I find this is a reasonable result in all of the above circumstances, given the signed agreement’s 30 day-clause did not indicate it was 30 days to run from the beginning of the calendar month. While I acknowledge the applicant was on holidays from June 17 to July 6, she also did not provide any evidence of her attempts to mitigate lost rental income.

19. Finally, I acknowledge the respondent’s various arguments about how past rental increases were handled, an alleged rent overpayment, and the applicant’s salon redecoration in the spring of 2018 that the respondent says inconvenienced her clients. I find the respondent has not proved these things, and I find they are sufficiently distinct from the notice requirement at issue in this dispute. To that end, I note the respondent did not file a counterclaim.

20. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $525, from July 1, 2018.

21. In accordance with the Act and the tribunal’s rules, I find the partially successful applicant is entitled to reimbursement of half her $125 in tribunal fees, namely $62.50. The applicant did not claim dispute-related expenses.

ORDERs

22. Within 14 days of this decision, I order the respondent to pay the applicant a total of $592.82, broken down as follows:

    a. $525 in debt,

    b. $5.32 in pre-judgment interest under the COIA, and

    c. $62.50 in tribunal fees.

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

24. 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 final decision.

25. 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.

Shelley Lopez, Vice Chair