



Civil Resolution Tribunal

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File: SC-2017-004226

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ralph et al v. Centra Windows Inc.*, 2019 BCCRT 217

B E T W E E N :

Colin Ralph and Ashley O'Neill

APPLICANTS

A N D :

Centra Windows Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Colin Ralph and Ashley O'Neill, live in a 4-story condominium in Victoria. The applicants' strata hired the respondent, Centra Windows Inc. (Centra), to replace all of the windows and patio doors in the condominium. The applicants say that Centra's work left their unit dirty and damaged some of their personal

items. The applicants claim \$1,986.13 in hotel costs, \$300 in food costs and \$500 for their personal belongings.

2. Centra says that it only agreed to reimburse the applicants for a 1 night hotel stay, which it paid directly to the strata.
3. The applicants are self-represented. Centra is represented by an employee, Anna Scarpino.

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*. 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 some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 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

8. The issues in this dispute are:
 - a. Did Centra agree to pay for the applicants' hotel stay?
 - b. Should Centra pay for the applicants' increased food costs during their hotel stay?
 - c. Did Centra damage any of the applicants' personal items, and if so, what is the cost of the damage?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The events giving rise to this claim were the subject of a previous tribunal dispute, *Ralph et al v. The Owners, Strata Plan 495*, 2018 BCCRT 532. In that dispute, the applicants claimed against their strata for the same claims as in this dispute. The

tribunal dismissed the applicants' dispute against the strata because the strata acted reasonably in hiring Centra. The tribunal member noted that Centra may be liable for breaching an oral contract with the applicants, but made no finding on that issue as it was not before her.

11. Centra replaced the applicants' windows in early September 2015, when the applicants were out of town. The applicants returned home on September 7, 2015, and found what they describe as a thick layer of silica dust covering their unit. The dust irritated their throats and eyes. They did not feel that they could stay in their unit for the night and went to a hotel.
12. The next morning, the applicants met with 2 Centra employees at the condo. The applicants say that the employees remarked that it was a very unusual amount of silica dust. The applicants say that the employees agreed to hire a cleaning company and authorized the applicants to stay in a hotel until the condo was cleaned. The applicants say that one of the employees said that Centra would pay for the hotel.
13. The applicants say that they also spoke to Ms. Scarpino on the phone, who confirmed that Centra would pay for the applicants to stay in a hotel. Ms. Scarpino denies that she would have authorized a hotel stay because that was a decision for senior management.
14. On September 13, 2015, a cleaning company did a full detailed dusting of the applicant's unit. Centra paid for the cleaning at a cost of \$551.25. There is no explanation for why it took until September 13 to clean the applicant's unit.
15. The applicants returned home on September 14 and were not satisfied with the cleaning. On September 17, 2015, the cleaning company returned for a supplementary cleaning. Centra paid for the supplementary cleaning at a cost of \$147.
16. On September 17, 2015, Ms. Scarpino emailed the applicants. She said that another employee would meet them at their unit to get their hotel receipts and credit

card information. She said that “a credit will be issued on your credit card for the cost of the hotel room as soon as possible”.

17. The applicants returned to their unit on September 18, 2015. They say that the dust was gone but their personal belongings were damaged. According to the applicants’ hotel receipts, the hotel stay from September 7 to September 18 cost a total of \$1,823.52. As discussed below, there is no explanation before me as to the difference between this sum and the \$1,986.13 claimed.

Did Centra agree to pay for the applicants’ hotel stay?

18. The applicants submit that Centra agreed to pay for their entire hotel stay for as long as it took to clean their unit.
19. In contrast, Centra submits that it only approved a 1 night stay. Centra says that it did not approve more than a 1 night stay because it had the applicants’ unit “immediately” cleaned.
20. I prefer the applicants’ evidence for 2 reasons.
21. First, I find that Centra’s position is at odds with Ms. Scarpino’s September 17, 2015 email. When Ms. Scarpino sent this email, she knew that the applicants had stayed in the hotel since September 7. I find that if Centra had only agreed to pay for 1 night, Ms. Scarpino would have asked for a receipt for 1 night of their stay, rather than all of their hotel receipts. I also find that Ms. Scarpino would have clarified in this email that Centra was only paying for 1 night. Instead, Ms. Scarpino said that Centra would issue a credit for the cost of their hotel room, without any limitation. I find that the statements in this email are inconsistent with Centra’s position that it had told the applicants that it would only pay for 1 night.
22. Second, Centra’s explanation as to why they only paid for 1 night is that they “immediately” arranged for the cleaning. However, the evidence shows that it took until September 13 to get the unit cleaned. Centra’s position is inconsistent with the facts because the cleaning was not done “immediately”. I find that if Centra had told

the applicants that it was only paying for 1 night of a hotel stay and then took almost a week to arrange for the cleaning, the applicants would have raised the issue at the time, which they did not.

23. Therefore, I find that it is more likely than not that Centra agreed to reimburse the applicants for their hotel stay until their unit was clean. I find that Centra breached that agreement by refusing to pay.
24. Centra says that it already reimbursed the applicants' strata for 1 night. In the previous tribunal decision, the tribunal member found that the strata issued the applicants a cheque for \$160, which the applicants had not cashed.
25. In this dispute, the applicants claimed \$1,986.13 but only provided hotel receipts with a total cost of \$1,823.52. The applicants do not explain the difference. There is no evidence that either Centra or the strata paid this amount directly to the hotel.
26. It is the applicants' obligation to prove how much they spent on the hotel. The best evidence for the total cost of their hotel stay is the amount shown in the hotel receipts. I find that the applicants spent \$1,832.52 on their hotel stay.
27. It is undisputed that Centra paid the applicants' strata \$160 for 1 night of the hotel stay, and that the strata attempted to pay this amount to the applicants. I find that ordering Centra to reimburse the applicants for the full cost of the hotel stay would lead to double recovery, because the applicants have not explained why they have not cashed the \$160 cheque that Centra already gave them, via the strata. I therefore find it appropriate to deduct \$160 from the applicants' claim.
28. I award the applicants \$1,663.52 for their hotel stay.
29. For clarity, I do not find that the applicants have established that Centra was negligent in the way it installed the windows. My finding is based solely on the fact that Centra agreed to pay for their entire hotel stay and failed to fulfill the terms of the agreement.

Should Centra have to pay for the applicants' increased food costs during their hotel stay?

30. With respect to the cost of food, the applicants say that they had to eat out instead of cooking from home during the time they stayed in the hotel. They say that this increased their food costs by an estimated \$300. They say that they asked Centra if it would reimburse them for food costs but never got a response. Therefore, by their own evidence, Centra never agreed to repay this amount.

31. As mentioned above, there is insufficient evidence to conclude that Centra was negligent in the way it installed the windows. In addition, the applicants' do not have a contract with Centra because it was the applicants' strata that hired Centra to install the windows. Because I have not found that Centra was negligent or that Centra agreed to pay for the applicants' increased food costs, the applicants' claim must fail.

32. I dismiss the applicants' claim for increased food costs.

Did Centra damage any of the applicants' personal items, and if so, what is the cost of the damage?

33. Finally, the applicants say that some of their personal items needed to be professionally cleaned and others needed to be thrown out. I asked the applicants to provide receipts of any items that were destroyed.

34. The applicants provided photographs of the dust in their unit, but no photographs of any item that they say was damaged or thrown away. They say that some of their items need to be replaced or cleaned, but it does not appear that they have done so even though several years have passed. They say that they had to throw out some sentimental items, but do not say what they are or what they are worth.

35. The applicants also do not provide any receipts to show that any items were professionally cleaned.

36. I find that the applicants have failed to prove that any of their personal items were professionally cleaned or destroyed. I dismiss this claim.
37. 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. While the applicants' were not successful on every point, I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicants do not claim any dispute-related expenses.

ORDERS

38. Within 14 days of the date of this order, I order Centra to pay the applicants a total of \$1,892.38, broken down as follows:
 - a. \$1,663.52 as reimbursement for the hotel stay
 - b. \$53.86 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 for tribunal fees.
39. The applicants are entitled to post-judgment interest, as applicable.
40. The applicants' remaining claims are dismissed.
41. 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.
42. 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.

Eric Regehr, Tribunal Member