



Civil Resolution Tribunal

Date Issued: March 4, 2019

File: SC-2018-006431

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Agosti v. Moumeni*, 2019 BCCRT 252

B E T W E E N :

Filomena Agosti

APPLICANT

A N D :

Sohrab Moumeni

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about the termination clause of a commercial sub-lease. The applicant, Filomena Agosti, says the respondent, Sohrab Moumeni, sub-leased commercial space from her and failed to provide 30 days' written notice when cancelling the sub-lease. The applicant seeks an order for payment of \$1,050 for the 30-day notice term. The parties each represent themselves.

JURISDICTION AND PROCEDURE

2. 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 relationships between parties that may continue after the dispute resolution process has ended.
3. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario as to how the collision occurred. Credibility of interested 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. 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. 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.
4. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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.
5. 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.

ISSUES

6. Is the applicant entitled to \$1,050 for the 30-day notice term?

EVIDENCE AND ANALYSIS

7. The applicant bears the burden of proof for the claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
8. On January 26, 2015 the parties signed a commercial sub-lease agreement for a hair service station in a salon. That lease began on March 1, 2015 and continued month-to-month until further notice of the applicant or respondent. Either party could end the lease on 30 days' written notice to the other party.
9. The parties agree that in 2018 the respondent's monthly rent was a total of \$1,050. It is undisputed that the rent was due on the first day of each month and that the respondent's last rental payment was made on June 1, 2018 for June 2018.
10. It is also undisputed that on June 17, 2018 the respondent removed his supplies from the salon. The applicant was not there but became aware the supplies were removed. And, before leaving on a trip the next day, the applicant sent the respondent a text requesting written notice of an intention to end the lease. It is undisputed that the respondent did not respond and knew of the applicant's scheduled time away from the salon.
11. After returning, on July 12, 2018 the applicant wrote the respondent an email noting that she had not yet received written notice of an intention to end the lease. It is undisputed that the respondent did not reply to that email. It is also undisputed that to date the respondent has not provided written notice as required under the lease.
12. The applicant also says that she provided a letter increasing the rent in January 2017 and a new lease agreement commencing April 1, 2017. The April 2017 lease increased the rent and clarified that a full month's rent was required regardless of

the start or end date of the lease. Although the respondent did not return a signed copy of the lease, the applicant says that the respondent paid the rent increase for 15 months after April 1, 2017, and as such accepted the terms of the lease.

13. The respondent says he did not receive the letter raising the rent or the April 2017 lease. I do not accept these claims by the respondent. The respondent admits that the applicant increased the rent and provides no other explanation as to how he was aware of the increase. If the respondent received notice of the increase in some other way, I would have expected him to identify those facts here.
14. Given that, I accept that the respondent received either the letter raising the rent or the April 2017 lease. However, on the evidence I am unable to say it is more likely than not that the respondent received the April 2017 lease. As such, I do not rely on the April 2017 lease.
15. The March 2015 lease required the respondent to provide 30 days written notice of cancellation. The respondent did not provide any notice. Given the evidence, I find that the applicant knew the respondent was ending the lease as of July 12, 2018. By then the applicant was aware the respondent had taken his things and had tried, without response, to contact him by text and email. As such, I find the respondent was required to pay the applicant rent for all of July 2018, as claimed.
16. While earlier decisions of the tribunal do not bind me, I have considered the recent decision in *Agosti v. Budzey*, 2019 BCCRT 216, between the same applicant and a different respondent. Different facts in this dispute resulted in a different finding regarding the amount of money owing.
17. 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 and award reimbursement of \$125.00 in tribunal fees, as claimed. The applicant did not claim dispute-related expenses.

ORDERS

18. I order that within 14 days of this decision, the respondent pay the applicant a total of \$1,186.11, broken down as:
- a. \$1,050 for rent,
 - b. \$11.11 in interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. 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.
21. 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.

Megan Volk, Tribunal Member