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Civil Resolution Tribunal

Indexed as: *TKM Tsuli International Trading Ltd. v. Royal Ocean Properties Inc.*, 2019 BCCRT 469

B E T W E E N :

TKM Tsuli International Trading Ltd.

APPLICANT

A N D :

Royal Ocean Properties Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. This small claims dispute is about the lease of a commercial space.

2. The applicant says it leased a suite from the respondent for May 1, 2018. On April 19, 2018, the applicant discovered that the suite did not have a required permit to be a separately numbered suite (12A). Although the respondent promised them a

"comfort letter" from the City of Delta, it never provided one. The respondent offered the applicant the existing unit, but with the unit number 12 rather than 12A, shared with another occupant. The applicant declined, saying this did not fulfil the lease. The applicant leased space elsewhere. The applicant seeks $4,266.68 as a refund for the security deposit and expenses it incurred between signing and terminating the lease.

3. The respondent says the unit was ready for occupancy May 1, 2018, though it had different numbering than the unit the applicant agreed to lease. The respondent says it upgraded security in the suite, removed a reception area, and patched and painted the walls at the applicant's request, only to learn that the applicant would not honour the lease.

4. The respondent says a City of Delta inspector shut down the suite because of the building's numbering system. The respondent billed the applicant the expenses to upgrade the suite and delivered it a cheque for $507.49 being the amount of the security deposit ($3,642.79) less its upgrade expenses ($3,135.30).

5. The applicant is represented by employee or principal Maureen Sakamoto. The respondent is represented by employee or principal Chris Scurr.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.

8. 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 decided to hear this dispute through written submissions.

9. 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.

10. 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.

ISSUE

11. The issue in this dispute is whether the respondent must pay the $4,266.68 claimed by the applicant.

EVIDENCE AND ANALYSIS

12. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.

13. The applicant and respondent signed a lease for unit 12A of a building in Delta (suite), with an occupancy and effective date of May 1, 2018. Neither party filed the lease document in evidence. The respondent did not dispute that the lease was for unit 12A.

14. The respondent told the applicant it could start moving into the suite, and renovating if needed, in April 2018. The applicant proceeded to start with some painting and renovation work at the suite.

15. On April 19, 2018, the applicant arrived to find a Stop Work Order from the City of Delta on the door. The Stop Work Notice itself did not provide details about why it was issued.

16. The applicant made inquiries with real estate agent John Weiss, who said that a City of Delta inspector had emailed the respondent to let them know that a building permit was needed to create unit 12A.

17. The applicant says, and I accept, that Mr. Weiss advised it that the respondent would try to obtain a comfort letter, meaning a letter from the City of Delta confirming it would issue a permit for unit 12A, as soon as possible.

18. On April 23, 2018, a City of Delta building inspector emailed the respondent saying that to create a new unit (12A) a building permit would be required, but that the inspector did not know if this would be allowed.

19. On April 27, 2018, the applicant emailed the respondent raising its concern that because the suite could not be separately numbered due to the permitting problem, the number would then be the same as the owner of another suite.

20. The applicant wrote that it would proceed if the applicant provided a letter from the City of Delta “approving that suite 12A is a legal suite and we can occupy it” (comfort letter), by Monday April 30, 2018.

21. On April 27, 2018, the respondent emailed the applicant explaining that the issue seemed to be access to the accessible washrooms in the unit. The respondent explained that, due to that issue the applicant would not be able to lease unit 12A with separate numbering. Rather, the space “must remain part of Unit 12”. To make up for the shared numbering, the respondent offered that the applicant could put up signage and install a separate mailbox for its correspondence.

22. The respondent did not provide the requested comfort letter before April 30, 2018.

23. On April 30, 2018 the applicant wrote to the respondent saying it was cancelling the lease, because it was not satisfied that the suite was legal, nor that the owner had obtained a permit to lease it. The letter requests an immediate refund of the $3,642.79 security deposit.

24. As well, the applicant says it incurred costs in the process of moving into the suite. Attached to the letter are details for some repair costs, totaling $437.59, and security costs and hook up for Telus phone service with charges to be determined. The applicant requests that the respondent re-pay the applicant for these expenses.

25. The respondent wrote an undated letter, which it says was sent May 24, 2018, to the applicant saying it had “cleared up the numbering error for your company to move into the suite June 1st 2018.” The respondent wrote that it knew the applicant no longer wanted to move in and had issued a demand to be reimbursed for expenses. Based on this reference, I find that this letter was written May 24, 2018, because it refers to content from the applicant’s May 22, 2018 letter.

26. In the May 24, 2018 letter, the respondent says it incurred expenses on the applicant’s behalf, including:
    a. agent’s leasing commission,

b. security bars supplied and installed, and

c. removal of reception desk and clean-up of column.

27. The respondent wrote that it would deduct those expenses and then return any balance to the applicant. It then asked the respondent to return the keys to the suite, and to remove the security system it had installed.

28. The respondent filed its own invoice for $3,135.30 to install security bars and spring bolts, and for removal of the reception desk, glass sign and wall, and resurfacing of a column. The invoice is also undated and does not provide the dates on which the work was completed.

29. On July 3, 2018, the respondent issued the applicant a cheque for $507.69, which it says was the total owing to the applicant after deducting expenses.

30. On July 5, 2018, the applicant wrote to the respondent again requesting payment of $4,266.68 for the security deposit, and costs for phone service, renovation supplies and security system costs. The applicant returned the cheque for $507.49, saying that it disagreed with being asked to pay the expenses when the suite had not been ready for May 1, 2018.

31. The respondent says it had a legal suite ready for occupancy, so the applicant should have agreed to move in. It says the building inspection was prompted by the applicant trying to obtain a business license.

32. The respondent argues that there was an agreement to change the move in date to June 1, 2018. However, it offered no evidence of this, aside from its own correspondence, which the applicant contests. I find there was no agreement to move the occupancy date to June 1, 2018.

33. The respondent also admits that it agreed to the applicant's request for the installation of security bars, locking devices, removal of the reception area, patching and painting of the walls, at its own cost.

34. The respondent says that although it could not get a comfort letter from the City of Delta, a “Department Head” there told it “that the licensing department Head was instructed to issue the required license to the complainant and that the issue was solved…” The respondent says it passed this information along to the applicant.

35. I find that the respondent failed to provide a comfort letter from the City of Delta, which the applicant had reasonably requested to proceed with moving into the suite. I find that the second-hand verbal assurance offered by the respondent was not enough.

36. Based on the whole of the evidence, I find that the lease was an agreement that the respondent would provide the applicant a separately numbered suite, 12A, that did not share numbering with any other occupant, with a move in date of May 1, 2018.

37. I also find that the respondent offered suite 12A for lease without obtaining the appropriate permits to ensure that suite 12A existed, for the purposes of the City of Delta. In doing so, the respondent breached the lease agreement.

38. Therefore, I find that the applicant was entitled to break the lease, because the respondent did not provide the suite as agreed either in terms of numbering or timing. I find that the respondent must refund the applicant the security deposit of $3,642.79.

39. Turning to the expenses the respondent says it incurred on the applicant’s promise to occupy the suite, which it valued at $3,135.30, I find the respondent responsible for these expenses. I say that because the respondent admits it agreed to provide the improvements at its own expense. As well, it was the respondent’s breach that resulted in the applicant being unable to move in.

40. I also find that the respondent must pay the applicant’s expenses, namely $623.89 for phone service hook up, renovation supplies and security system costs. I find that the applicant incurred these expenses based on the respondent’s commitment that it was providing a properly permitted, separately numbered suite as of May 1, 2018. As well, the respondent had verbally agreed that the suite was ready, the

month before, for the applicant to start renovating and setting up. I accept that, because the respondent failed to provide the suite as agreed, the applicant will incur these same types of expenses again, in an alternate space.

41. The respondent also says it never received a deposit because it was paid to the realtor and formed the realtor’s commission.

42. As for the respondent’s suggestion that the security deposit was paid to a real estate agent, I find that the applicant paid the deposit under the lease with the respondent. If the respondent wishes to consider a claim against a real estate agent, that is a separate matter.

43. I dismiss the respondent’s claim for legal fees of $400 because it was unsuccessful in this dispute. In any case, tribunal rule 132 says that except in extraordinary cases, the tribunal will not order payment of legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings.

44. In summary, I find that the respondent must pay the applicant a total of $4,266.68, broken down as:

    a. security deposit of $3,642.79,

    b. floor pinnacle oak and foam $318.49,

    c. door knob and cornerbread $38.31,

    d. Pro Sand, nails, skynkoul and cornerbread $36.91,

    e. Paint, paint tool and form $43.88,

    f. Telus Phone Service $42.50,

    g. Security System (at the suite) $44.05, and

    h. Security System (resetting at new office) $99.75.

45. 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. I find the applicant is entitled to reimbursement of $175 in tribunal fees and $10.50 in dispute-related expenses to deliver the Dispute Notice, which I find reasonable.

ORDERS

46. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $4,515.55, broken down as follows:

    a. $4,266.68 for the security deposit and renovation expenses,

    b. $63.37 in pre-judgment interest under the *Court Order Interest Act*, calculated from May 1, 2018 to the date of this decision, and

    c. $185.50, for $175 in tribunal fees and $10.50 in dispute-related expenses.

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

48. 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.

49. 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.

Julie K. Gibson, Tribunal Member