



Civil Resolution Tribunal

Date Issued: April 23, 2019

File: SC-2018-008123

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Saunders v. 443602 B.C. Ltd. DBA Old Town Bay Marina*,
2019 BCCRT 488

B E T W E E N :

Paul Saunders

APPLICANT

A N D :

443602 B.C. Ltd. DBA Old Town Bay Marina

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Paul Sanders said he was asked to leave his boat slip at the respondent 443602 B.C. Ltd. DBA Old Town Bay Marina three and a half months before his slip rental was due to end. He claims a refund of the remaining \$1,234.50 slip rental.

2. The respondent agrees that the applicant had a one-year contract to rent a slip at the marina. The respondent says it asked the applicant to leave after 9 months, because he damaged the marina's sign with his car and was living on the boat, in breach of the moorage contract.
3. The applicant is self-represented. The respondent is represented by its president Todd Kylo.

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, he 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.
6. 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.

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.

ISSUE

8. The issue in this dispute is whether the applicant is entitled to the claimed refund of \$1,234.50 he paid to moor his boat at the respondent marina.

EVIDENCE AND ANALYSIS

9. The applicant bears the burden of proving his claim on a balance of probabilities.
10. I have reviewed all of the evidence and submissions, but only refer to them below to the extent necessary to explain my decision.
11. The applicant rented a boat slip from the respondent for 12 months.
12. Both parties signed a Boat Storage Agreement on September 29, 2017, which I also refer to as a moorage agreement.
13. The agreement provides that the applicant will store his boat at the marina from November 1, 2017 to October 31, 2018 for \$336 per month, or \$2,116.80 total.
14. The agreement says the boat storage charges are prepaid at the time of signing the agreement and are “non-refundable”.
15. The agreement says that:
 - a. the boat must not be used as living quarters at any time,

- b. the applicant indemnifies the respondent for any damage caused by him to the marina, and
 - c. the respondent the absolute right to cancel the agreement “at any time, without cause or reason”.
16. If the respondent terminates the agreement, the agreement says the respondent is entitled to retain any balance of boat storage charges as “liquidated damages.”
17. Based on the agreement, signed by the applicant and filed in evidence, I find that he agreed that the respondent could cancel the agreement at any time. I also find that the applicant agreed that the moorage fees paid were non-refundable.
18. The respondent says that the applicant was asked to leave the marina before the end of the agreement because he was living on his boat. The applicant did not address this issue in his submissions. Because the applicant chose not to address this central issue, I find that the applicant was living on the boat, contrary to the terms of the moorage agreement.
19. The respondent also says that the applicant drove his truck into a marina sign, causing damage to it. In his submissions, the applicant does not directly address the allegation of damage to the sign but says any repair expense should have been put through his insurance. I find that the applicant damaged the marina’s sign.
20. The respondent says the applicant also damaged the boat beside his. The applicant says he was asked to leave because of this accident, but that there was no evidence that he was responsible for hitting the other boat. The respondent says that a witness observed the applicant hitting and damaging the boat moored beside him. However, no documents were filed about this incident.
21. I have found that the \$2,116.80 paid by the applicant was non-refundable. I have also found that he breached the agreement by living on his boat and damaging the marina’s sign. Regardless of whether he was responsible for damaging the boat next to his, he is not entitled to a refund.

22. The applicant has not met the burden of proving that he is entitled to a refund of his moorage fees.

ORDER

23. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member