



Civil Resolution Tribunal

Date Issued: April 30, 2019

File: SC-2018-008807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *de Vries v. 0884263 B.C. LTD.*, 2019 BCCRT 516

B E T W E E N :

Janet de Vries

APPLICANT

A N D :

0884263 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Janet de Vries, leased a property from the respondent, 0884263 B.C. Ltd., at Magna Bay Resort (resort) for the summer of 2018. In response to an allegation that the applicant's dog attacked someone at the resort, the resort banned the applicant's dog from its premises. The applicant says she was forced to vacate the property for the remainder of the lease and she wants the respondent to

refund her \$2,583 for the portion of the lease that she was unable to use. She also wants the respondent to pay her \$200 for her time and effort spent on this dispute.

2. The respondent says it was the applicant's dog, not the applicant, who was banned from the resort. They say they do not owe the applicant anything as they fulfilled the terms of the lease.
3. The applicant is self-represented and the respondent is represented by its owner.

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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 9.3 (2), 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 respondent is required to refund the applicant \$2,583 for the portion of the lease she did not use, or to pay her \$200 for her time spent on this dispute.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. During the summer of 2018 the respondent owned lot 8 (property) at the resort, which is managed by an owners' corporation. The applicant signed a lease agreement with the respondent to lease the property from May to September 2018. The applicant's lease agreement for 2018 is not in evidence, but she submitted her 2017 lease agreement, as she had leased the same property from the respondent the previous summer. That agreement states that the applicant agreed to comply with the Magna Bay Resort and Owners Corporation Rules and Regulations, which are not in evidence.
12. It is undisputed that under the 2018 lease agreement the applicant paid a first installment of \$2,153 on November 1, 2017 and a second installment of \$2,152 on May 1, 2018.
13. On July 1, 2018 the resort informed the applicant by letter that its board had unanimously decided her dog was banned from the resort for attacking another tenant of the resort on June 30, 2018. The applicant denies that her dog attacked anyone.

14. On July 2, 2018 the applicant sent a complaint to the resort's management, and the applicant learned the resort's board had scheduled an emergency meeting on July 5, 2018 to address her concern.
15. On July 4, 2018 the respondent's representative emailed the applicant to confirm he planned to attend the resort's board meeting the following evening. The applicant says she took this to mean he would speak on her behalf, but I find that is not indicated in the email. It is uncontested that the respondent was not on the resort's board at the time.
16. On July 6, 2018 the applicant says she received another letter from the resort confirming their decision to ban her dog from its premises. That letter is not in evidence. The applicant says she never had the opportunity to speak to the board to present her side of the story, and that the board did not follow the proper procedure in coming to its decision. She says she never received the minutes of the board meetings at which the decision to ban her dog was made and subsequently upheld.
17. The applicant says she did not break any of the resort's rules, however those rules are not in evidence, so I cannot determine the accuracy of this claim. The applicant says it was unreasonable to expect that she would stay at the resort for the remainder of her lease without her family dog. She says she could not afford kennel fees for such a long period of time, and she could not find anyone to care for her dog. She says this left her no choice but to vacate the property.
18. On July 7, 2018 the respondent's representative sent the applicant an email stating that the applicant had not been banned from the resort and that it was her choice to vacate. The email stated that he would try to re-lease the property for the balance of the season, and that if he was successful in doing so he would send the applicant any funds received less an administration fee.
19. On July 22, 2018 the respondent sent an email to the applicant stating that they had not found anyone to rent the lot for the remainder of the season, but they were renting it as much as they could. They said they would track the revenue generated

over the summer and at the end of August they would provide the applicant with a statement of revenue and issue the applicant her share of the payment. The email also stated the respondent was planning to sell the property and that if they did so before the end of September they would make a refund adjustment. The respondent says they were able to find some nightly rentals for the property in 2018 after the applicant vacated, and they say they offered a portion of this income to the applicant, who refused it, as she wanted the full amount of the remainder of her lease.

20. The applicant says the respondent sold the property, and she submitted a text message from her neighbor at the resort who told her the property was sold soon after the applicant vacated it. However, I find this message does not establish the date the property sold, or that it sold at all. The respondent says the property did not sell during the period of the applicant's lease, and there is no evidence to contradict this aside from the applicant's allegation. I find the applicant has not established that the respondent sold the property.
21. The applicant is responsible for proving her claim, and on the evidence before me I find she has not done so. She did not submit the 2018 lease into evidence, and there is no indication the respondent breached any of its terms. The applicant did not submit the resort's rules and regulations, so I cannot determine whether the applicant abided by those rules. I appreciate that in the circumstances, by banning her dog from the resort the applicant felt she had effectively been banned because she was unable to make alternative arrangements for her dog. However, there is no indication the respondent was part of the decision to ban the applicant's dog. On the evidence before me I find the respondent is not required to refund the applicant under the terms of the lease.
22. After the applicant vacated the property the respondent clearly offered to send her part of any revenue it earned from renting out the property for the remainder of her lease, however I find the respondent made it clear in their email communications that they were under no obligation to do so. I also note the applicant provided no

consideration for this arrangement, which is an essential element of a contract. Therefore, I find the respondents' offer to pay the applicant in these circumstances did not amount to an enforceable agreement. Even if it had amounted to an enforceable agreement, the respondent says the applicant refused their offer to pay her part of the revenue earned for the few nights they were able to rent the property, and the applicant does not dispute this. There is no evidence of the amount of rental revenue the respondent earned after the applicant vacated the property. Therefore, I find the applicant has not established she is entitled to a refund of her lease payment under any new arrangement she had with the respondent. I dismiss this claim.

23. 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. Since the applicant was unsuccessful I find she is not entitled to reimbursement of her tribunal fees. The applicant has claimed \$200 for the time and effort she spent on this dispute, however such amounts are generally not recoverable before this tribunal, and the applicant was unsuccessful, therefore I dismiss this claim. The applicant has not claimed any other dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member