



# Civil Resolution Tribunal

Date Issued: June 14, 2019

File: SC-2018-007022

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ball et al v. Brett*, 2019 BCCRT 732

**B E T W E E N :**

Myrna Ball and Glynn Ball

**APPLICANTS**

**A N D :**

Lorraine Brett

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about who is responsible after a hotel suite's floor was damaged.
2. The applicants Myrna and Glynn Ball operate a hotel. The applicants say that the respondent Lorraine Brett agreed to pay \$550, plus \$71.50 in taxes, weekly, for her

son Jordan to stay at the hotel. The applicants say Jordan damaged the suite, leaving it unfit for occupation from May 14 to 28, 2018.

3. Although the Dispute Notice originally named Jordan Brett as a respondent, the applicants later withdrew their claim against him. I have amended the style of cause accordingly.
4. The applicants say Lorraine Brett breached her contract to be responsible for the damage. As well, they say the respondent was an occupier as defined by the *Occupiers Liability Act*. The applicants say the respondent owed them a duty of care to use their premises in a reasonably safe manner and that the respondent breached that duty by doing, or permitting willful damage to be done, to the hotel.
5. The applicants seek \$2,919.09 for the handyman invoice they paid to repair the damage to the suite, and \$1,243.00 for two weeks of lost revenue while the suite was being repaired.
6. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.

9. 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.
10. 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.
11. Under tribunal rule 9.3(2), 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**

12. The issues in this dispute are:
  - a. whether the respondent must pay the applicants the claimed \$2,919.09 for repair of the hotel suite floor, and
  - b. whether the respondent must pay the applicants \$1,243.00 for the two weeks they say they were unable to rent the suite during repairs.

## EVIDENCE AND ANALYSIS

13. In this civil claim, the applicants bear the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.
14. The hotel registration cards lay out the written terms of the agreement between the applicants, Mr. Brett, and the respondent for the use of the hotel suite in April and May 2018.
15. The written agreement provides that any damage done to the hotel by the registrant will be charged to the registrant's credit card. The credit card provided for Mr. Brett's registration belonged to the respondent. Mr. Brett signed the hotel registration card in April 2018.
16. On May 7, 2018, the respondent signed a copy of the same document, for herself and Mr. Brett as registrants, for the period of May 7-14, 2018.
17. Based on the May 7, 2018 registration card, I find that the respondent agreed to be responsible for the conduct of all occupants of the room, and to have her credit card charged for "actual expenses" arising from occupants causing damage to the room.
18. The respondent paid \$621.50 on April 23, 2018, \$621.50 on April 30, 2018, and \$678.00 on May 7, 2018 for the hotel stay.
19. The applicants say that Mr. Brett's hotel stay ended on May 14, 2018, when one of the hotel's employees discovered that the floorboards had been pulled up in 8 different locations. The applicants say Mr. Brett either agreed, or told them before being asked, that he had pulled up several floorboards in the suite.
20. I find that some floorboards in the suite were damaged by Mr. Brett. The respondent argued that the damage pre-dated Mr. Brett's stay, but given the evidence from the applicants and the handyman who came to conduct repairs, I do not agree. There is no evidence that Mr. Brett denies damaging the floorboards.

21. Once the respondent was informed of the damage, she attended at the hotel. The respondent took two photographs of the hardwood floor in the suite, which show some floorboard damage. At least two of the visible floorboards are raised above the grade of the floor and at least three floorboards appear to be cracked. While I accept the respondent's point about the floors being otherwise aged, I find that the cracks and raised floorboards were new damage caused by Mr. Brett.
22. The applicants question these photographs and say the damage caused by Mr. Brett did not occur until a few days later. However, I accept that these photographs were taken after the damage occurred. There is no reason that the respondent would have attended beforehand to photograph the hotel's floor.
23. The respondent and applicants disagree about the extent of the damage caused by Mr. Brett. The respondent says the damage was mostly minor. The respondent estimates it would have taken \$300 to make reasonable repairs to the damage she observed. The respondent bases her estimate on her own experience restoring older homes.
24. A February 11, 2019 email from handyman B describes that he observed damage to several floorboards that had been pried up and could not be repaired. These broken boards required replacement, and then the new floorboards had to be sealed. All of the repair work was needed to the suite where Mr. Brett stayed. I accept that the repair work was required to address the damage done by Mr. Brett, as handyman B describes it.
25. I make this finding based on handyman B's description of what he observed at the time. Handyman B originally had photographs, but inadvertently deleted them before the tribunal decision process. The respondent's photographs are consistent with the damage Handyman B describes. The respondent did not provide a competing estimate from anyone else in the business of repairing hardwood floors.
26. On May 24, 2018, Mr. Handyman, the company for whom handyman B worked, issued the applicants a \$2,919.09 invoice for repairs to the suite's flooring. The

invoice shows that \$327.09 was paid for materials, and the balance of the invoice is for 23 hours of labour. I infer that the applicants paid this invoice shortly after.

27. The respondent says that, on May 16, 2018, the hotel charged \$3,666.50 to her credit card based on an estimate of what it would cost to fix the hardwood floors in the suite. The parties say the credit card charge was contested and reversed.
28. The respondent says the amount charged was exaggerated, not tied to actual expenses, and that the applicants failed to mitigate their losses in the claim for lost revenue.
29. I find that the charge of \$2,919.09 was paid by the applicants to fix the floor damage caused by Mr. Brett. Because the respondent signed the registration card agreeing to pay the actual repair expenses for any damage caused, willfully or not, by occupants of the suite, I find that she must pay the \$2,919.09 to the applicants.
30. Because I have determined the claim for floorboard repairs is based on contract law, I do not need to consider the applicants' *Occupiers Liability Act* argument.
31. Turning to the claim for lost revenue, the applicants have asserted that the suite was unfit for occupation for a two-week period from May 14 to 28, 2018, and that they would otherwise have rented it for this period for \$1,243.
32. I accept that the suite could not be rented while the work was being completed and the floor's finish was drying. There is no evidence that this took two weeks. Rather, several days would likely suffice. The invoice for repairs was issued May 24, 2018, but the applicants are claiming for a period up to May 28.
33. The applicants have not proven that they had offers to rent this suite for the period of May 14 to 28, or any of those days. They also did not file evidence that the rest of the hotel was rented during that time frame, which might also demonstrate demand.
34. I find that the applicants have not proven that the \$1,243 loss of revenue was caused by the damage to the suite. For these reasons, I dismiss this claim.

35. 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. Because the applicants were mainly successful in this dispute, I find they are entitled to reimbursement of \$175 in tribunal fees.

## **ORDERS**

36. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$3,141.31, broken down as follows:

- a. \$2,919.09 as reimbursement for the repair costs paid by the applicants,
- b. \$47.22 in pre-judgment interest under the *Court Order Interest Act*, calculated from June 24, 2018, one month after the invoice was issued to the date of this decision, and
- c. \$175.00 in tribunal fees.

37. The applicants are entitled to post-judgment interest, as applicable.

38. 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.

39. 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.

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Julie K. Gibson, Tribunal Member