



Civil Resolution Tribunal

Date Issued: July 10, 2019

File: SC-2019-001212

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *VILLA EUROPAE HOME et al v. CHUNG*, 2019 BCCRT 832

B E T W E E N :

VILLA EUROPAE HOME and TONG SUN

APPLICANTS

A N D :

LUCAS CHUNG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant Tong Sun rents out a property on the website Airbnb called VILLA EUROPAE HOME (property), who he has named as a co-applicant. The respondent Lucas Chung reserved the property through Airbnb and after various communications with the applicants and Airbnb administrators, he cancelled his

reservation and Airbnb decided to refund him the full amount of his reservation. Airbnb is not a party to this dispute.

2. The applicants want the respondent to pay the \$726.53 reservation fee and to pay \$1,900 for additional guests. The respondent says this dispute has already been mediated through Airbnb and that he does not owe the applicants anything.
3. The respondent is self-represented. Mr. Sun represents himself and VILLA EUROPAE HOME.

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 pay the applicants the \$726.53 reservation fee or the \$1900 fee for additional guests.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicants' 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 applicants' claims.
11. It is undisputed that the applicants' pricing scheme for the property on Airbnb charged a \$50 fee per additional guest per night above 4 guests at the time of booking. The house rules for the property state, "Additional guests unreported at time of booking will result to a surcharge of \$100 per guest per night. At the time of booking, the booking agent / guest should make arrangement to pay a normal guest surcharge if beyond 16 guests" (quote reproduced as written). The applicants' Airbnb advertisement for the property allows for full refunds within 48 hours of booking if the reservation is made within 14 days of check-in. The property allows 50% refunds minus the service fee for cancellations made up to 7 days before check-in, and no refunds for cancellations within 7 days of check-in.
12. On January 15, 2019 the respondent reserved the property on Airbnb for 1 guest and paid a total of \$726.53 including the nightly rate and cleaning fee. On the same date he wrote the applicants a message through Airbnb stating that he was planning to host a birthday party at the property and was expecting approximately 20 guests, 8 of whom would stay overnight. On January 16, 2019 the respondent wrote the applicants another message asking if the guests who were not staying overnight were required to pay the additional guest surcharge.

13. On February 3, 2019 the applicants notified the respondent that he was required to register all guests, otherwise a surcharge of \$100 per guest would apply. The applicants said the respondent had only reserved the property for 1 guest and said that he could either revise the booking to reflect the correct number of guests, or else pay the \$100 per guest surcharge when he arrived at the property.
14. On February 5, 2019 the applicants clarified that the respondent was required to pay the guest surcharge for all guests, not just the guests who would be staying overnight. The applicants gave the respondent the option of paying the \$1900 additional guest surcharge in cash when he arrived at the property. They also informed the respondent that there would be a \$200 garbage disposal deposit to cover excess garbage and misclassified garbage which would be refunded if there was no excess garbage after his stay.
15. On February 7, 2019 a case manager from Airbnb messaged the applicants notifying them that the respondent wished to cancel his reservation because he did not agree with the additional charges. Airbnb said that the applicants' pricing settings provided for a \$50 fee per guest per night for additional guests above 4, and it was unable to enforce the applicants' house rules of a \$100 surcharge per additional guest, since that pricing scheme was not included in the pricing settings.
16. Airbnb also said it does not allow any transactions outside of the Airbnb website, and that such transactions are a violation of its terms of service, will void its host guarantee and security deposit, and could result in the applicants' removal from the Airbnb platform. Airbnb said the applicants could request the garbage deposit through its resolution centre, not offsite, but that Airbnb could not enforce the payment of this deposit since it already has a system in place for security deposits. Airbnb said that if the applicants agreed not to charge the respondent any additional fees it would uphold the cancellation policy, otherwise it would issue the respondent a full refund in accordance with its terms of service.

17. On February 7, 2019 the applicants informed the respondent that they required a piece of government photo identification and a credit card for incidentals at check-in.
18. On February 8, 2019 an Airbnb support person notified the applicants that under its terms of service hosts are not allowed to ask guests for their credit cards, as the collection of personal information is handled directly by Airbnb. Airbnb said the respondent was no longer comfortable renting the property because of the multiple issues that had arisen, and that under its terms of service it would cancel the reservation and issue a full refund to the respondent, which it did the same day.
19. The applicants say they had a contract with the respondent which he breached, so he should be required to pay them the reservation fee and the additional guest surcharge. I disagree. The applicants advertised the property on Airbnb and were subject to Airbnb's terms of service, which are not in evidence. The evidence before me indicates that the applicants attempted to charge the respondent for various fees and deposits which were in breach of Airbnb's terms of service, and because of those breaches Airbnb refunded the respondent in accordance with its terms of service. The applicants have not named Airbnb as a party to this dispute or established that Airbnb improperly cancelled the reservation or improperly issued the respondent a refund. In the absence of such evidence I find the applicants have not established any legal basis on which they are entitled to payment from the respondent. I dismiss the applicants' claims.
20. 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 applicants were unsuccessful I find they are not entitled to reimbursement of their tribunal fees.

ORDER

21. I dismiss the applicants' claims and this dispute.

Sarah Orr, Tribunal Member