



Civil Resolution Tribunal

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File: SC-2018-008967

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Open Gate Architectural Scale Model Ltd. v. Todevich*, 2019 BCCRT 878

B E T W E E N :

Open Gate Architectural Scale Model Ltd.

APPLICANT

A N D :

Galina Todevich

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Open Gate Architectural Scale Model Ltd. leased a commercial strata lot from the respondent Galina Todevich for one year, from September 1, 2017 to August 31, 2018. At the time, the respondent had the legal authority to rent out the strata lot. The applicant paid a \$3,000 security deposit.

2. The respondent's marriage subsequently broke down. The applicant signed a new lease with the respondent's husband.
3. The applicant says the respondent did not return the \$3,000 security deposit, but instead deposited it into a joint account and said "good luck" getting the money. The applicant claims a refund for its \$3,000 security deposit.
4. The respondent agrees that she received a \$3,000 security deposit from the applicant. The respondent says that the applicant failed to vacate the strata lot when they were obliged to, so the \$3,000 was applied as rent for September 2018.
5. The applicant is represented by employee or principal Ivy Hu. The respondent is self-represented.

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. 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.
8. 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.

9. 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.

ISSUE

10. The issue in this dispute is whether the applicant is entitled to be refunded the \$3,000 it paid the respondent as a security deposit.

EVIDENCE AND ANALYSIS

11. The applicant bears the burden of proving its claim, on a balance of probabilities.
12. The applicant signed a one-year lease for a commercial strata lot in Vancouver. The term of the lease was September 1, 2017 to August 31, 2018.
13. It is uncontested, and I find, that, at the time that the applicant paid the respondent the \$3,000 security deposit, the respondent had a power of attorney for her husband, AS, the registered owner of the strata lot. Based on the documents filed in evidence, I find that the \$3,000 was paid to the respondent personally.
14. Near the end of the lease year, the marriage between the respondent and AS began to deteriorate. AS revoked the respondent's power of attorney. As a result, the respondent was no longer the person legally entitled to rent out the strata lot.
15. In August 2018, the respondent emailed the applicant asking for a meeting to discuss further rent. She says she received no reply. I find that this email is not determinative of any issue with respect to the security deposit.

16. In July 2018, the applicant decided to sign a new lease, starting September 1, 2018, with the respondent's husband. The new lease was signed August 31, 2018. The same day, the applicant sent a copy of it to the respondent.
17. The applicant requested a refund of its \$3,000 security deposit. The respondent says she did not refund it, because she treated it as rent for September 2018. The applicant say they paid rent for September 2018 to the respondent's husband. I accept the applicant's evidence because it is more consistent with the documentary evidence than is the respondent's evidence.
18. The respondent also says she was not informed that the applicant had signed a new lease with her husband, AS. Based on the email sent by the applicant on August 31, 2018, informing the respondent of the new lease, I find that she was made aware of it. The respondent denies receiving this email, but I find that it was sent to her. I say this because she responded to the applicant, from the same email address, only two weeks earlier.
19. In the August 31, 2018 email, Ms. Hu wrote "We had to sign the new lease with your husband, who is the registered owner of the property, because he took away your power of attorney." As the respondent did not contest this change in legal authority, I find that she was no longer the person legally able to rent the strata lot out, by that point.
20. The respondent says the applicant did not provide a walk-through to ensure no damage had been done to the strata lot. The respondent says this was a precondition to refunding the security deposit.
21. A March 4, 2019 email from SS, the daughter of AS, confirmed there was no damage to the strata lot. SS also confirmed that the respondent had no authority to rent the strata lot.
22. Given the change in legal authority, I find that the respondent could not access the suite for a walk-through after August 31, 2018. As well, I accept the unchallenged evidence of SS that the applicant did not damage the strata lot. This is consistent

with the text message filed in evidence showing that the respondent considered the applicant a good tenant.

23. Neither party filed a copy of the lease in evidence. I infer that either party was entitled to end the lease at the end of the term, being August 31, 2018. The applicant decided to end the lease and start a new lease with the person who, by then, had legal authority to rent it out.
24. I also find that there was no application of the \$3,000 towards rent for September 2018. By then, the applicant was under a lease with the respondent's husband. The lease between the applicant and respondent had expired and the respondent had been notified that the lease was ended. Based on my findings above, the respondent was no longer entitled to collect rent for the strata lot.
25. I find that the respondent's explanation that she deposited the \$3,000 into a joint account with her husband, which was not proven by any banking documents, is insufficient to prove that she repaid the deposit or is not responsible to repay it to the applicant
26. In the circumstances, I order that the respondent refund the applicant the \$3,000 security deposit.
27. 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 \$125 in tribunal fees.

ORDERS

28. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,171.59, broken down as follows:
 - a. \$3,000 as a refund of the applicant's security deposit,

- b. \$46.59 in pre-judgment interest under the *Court Order Interest Act* calculated from September 1, 2018 to the date of this decision, and
- c. \$125 for tribunal fees.

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

30. 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.

31. 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