



# Civil Resolution Tribunal

Date Issued: October 31, 2019

File: SC-2019-005253

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coatta v. KLM Enterprises Inc.*, 2019 BCCRT 1238

BETWEEN:

STEPHEN COATTA

**APPLICANT**

AND:

KLM ENTERPRISES INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a vacation rental. The applicant Stephen Coatta says the respondent KLM Enterprises Inc. agreed to change the duration of his stay from 10 days to 9 days. The applicant claims \$1,650 as the full refund for the one day (Refund), plus \$1,000 as the return of his damage deposit, for a total of \$2,650.

2. The respondent admits it had authorized the Refund, but that noise complaint charges and damage to a sofa bed exceeded the applicant's \$2,650 claim. In this dispute, the respondent essentially offers to pay \$1,195.62, being the \$2,650 less \$1,454.38 for the cost of the replacement sofa bed. The applicant denies responsibility for the sofa bed or any other charges.
3. The applicant is self-represented. The respondent is represented by Lisa Moore, the respondent's agent who dealt with the applicant and had authorized the Refund.

## **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* (CRTA). 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 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances of this dispute, I find that I am properly able to hear this dispute based on the documentary evidence and written submissions before me.
7. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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 owes \$2,650 as claimed, or, whether it can deduct \$1,454.38 for a replacement sofa bed the respondent says the applicant damaged.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the burden of proof is on the applicant to prove his claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. In August 2018 the applicant booked and paid 50% of 10 days of accommodation rental for his family in a "combined chalet". The \$18,350 vacation was for February 1 to 10, 2019. The 50% balance was paid in December 2018. However, on September 10, 2018, the applicant's wife asked that the booking drop to 9 days, with February 9 as the check-out date. Ms. Moore approved the date and duration change that same day, and sent a copy of the signed and initialed agreement with the updated stay. The applicant's family checked out of their accommodation on February 9, 2019. According to the parties' contract, the damage deposit was to be returned within 14 days, by February 23. All of this is undisputed.
11. In a February 22, 2019 email from someone at what appears to be a tour company, Ms. Moore is told about a broken sofa and that one of the bunk beds is without a rail. However, there is no evidence or submission before me that the applicant is responsible for a missing bunk bed rail. I infer this email related to the chalet's guests that followed the applicant's family. The respondent also submitted a February 22, 2019 email from a cleaner to Ms. Moore, which contained 2 photos showing an open sofa bed. The photos appear to show that the bed will not fold back into the sofa. The cleaner's email said that the sofa bed was found broken after a February 19, 2019 cleaning and she acknowledged she should have advised Ms. Moore that same day of the issue. These 2 emails are the only evidence the

respondent submitted about the broken sofa bed, apart from a \$1,254.38 invoice for its replacement plus a \$200 invoice for time spent in getting and installing it. More on the sofa bed below, but I note here Ms. Moore said nothing to the applicant about the sofa bed at this time.

12. On March 3, 2019, the applicant asked for the \$1,650 Refund, plus a return of their \$1,000 damage deposit. It is undisputed the respondent had earlier agreed to give the applicant the Refund. The respondent did not immediately respond.
13. On March 17, 2019, Ms. Moore left a voice mail for the applicant that there was a problem with the sofa bed, and would provide more details later when she knew the repair costs. At this point, 36 days had passed after the applicant checked out. Yet, the next day, Ms. Moore emailed the applicant saying, “not to worry” and that she would respond to the applicant’s query about the Refund and damage deposit on April 3. In its submissions, the respondent does not explain why it waited until March 17 to advise the applicant about the sofa bed issue, when its cleaner notified the respondent about it on February 22.
14. On April 8, 2019, Ms. Moore emailed the applicant that he owed \$2,857.88 for damages that apparently included charges for the sofa bed and alleged noise complaints. Ms. Moore noted the damage was “well documented”. On April 15 and May 6, 2019, the applicant asked for the evidence of damage. The applicant says he never received a reply, and I have no evidence that Ms. Moore did reply, apart from her submission that she did. On July 10, 2019 the applicant started this proceeding.
15. I turn back to the sofa bed. There is no evidence before me about whether the original sofa bed could have been repaired or what exactly was wrong with it. I disagree with the respondent that the sofa bed damage was “well documented”. As noted, the only evidence before me are the February 22, 2019 emails described above. Even if the sofa bed was damaged there is insufficient evidence before me that it was damaged by the applicant or his guests. The cleaner did not clean the room until 10 days after the applicant’s departure. Further, the applicant provided

witness statements from his family that the sofa bed could not be opened on their arrival and so they say it was already broken. The respondent provided no evidence to the contrary, such as a statement from the cleaner that the sofa bed worked before the applicant's family's arrival.

16. On balance, I find there is no basis for any deduction from the applicant's Refund and damage deposit for the sofa bed. There is no other damage at issue in this dispute and I find there is no evidence of any. In any event, the contract states the deposit was to be returned within 14 days of check-out if the deposit was not "applied" to cover damages. As noted above, the respondent said nothing to the applicant about damage until over a month after check-out. I find that under the contract the respondent had not applied the deposit to damages by the 14-day mark, so it was bound to refund the damage deposit without any deduction. I find there is no basis for a deduction from the deposit or the Refund due to alleged damage.
17. Next, in its Dispute Response the respondent said there were noise complaints that led to charges that together with the sofa bed replacement cost exceeded the applicant's claim. However, the respondent provided no evidence and no submissions about noise or any associated charges. The applicant disputes noise complaints and says under the parties' contract they cannot be charged because security was not called. On the evidence before me, I find there is no basis for any deduction relating to noise complaints.
18. Given my conclusion above, I find the applicant is entitled to the \$1,650 Refund plus his \$1,000 damage deposit, for a total of \$2,650.
19. Contrary to the applicant's submission, I find the respondent's 25% contractual interest rate on late payments does not apply to the applicant's claim. This is because the parties did not agree to it. However, the *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to \$35.54 in pre-judgment interest on the \$2,650 under the COIA. I calculated this from February 23, 2019, the date the deposit and Refund should have been refunded.

20. As provided under the CRTA and the tribunal's rules, I find the respondent must reimburse the successful applicant his \$125 in paid tribunal fees. The applicant did not claim dispute-related expenses.

## **ORDERS**

21. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,810.54, broken down as follows:

- a. \$2,650 in debt,
- b. \$35.54 in pre-judgment interest under the COIA, and
- c. \$125 in tribunal fees.

22. The applicant is entitled to post-judgment interest under the COIA, as applicable.

23. Under section 48 of the CRTA, 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.

24. Under section 58.1 of the CRTA, 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 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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Shelley Lopez, Vice Chair