



Civil Resolution Tribunal

Date Issued: December 5, 2019

File: SC-2019-005904

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kubicki v. Holiday Whistler Accommodations Inc.*, 2019 BCCRT 1374

B E T W E E N :

ANNELISE KUBICKI

APPLICANT

A N D :

HOLIDAY WHISTLER ACCOMODATIONS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an agreement for the cleaning of rental properties. The applicant, Annelise Kubicki says that the respondent, Holiday Whistler Accommodations Inc., hired her to clean properties and then did not pay the amount owing. The applicant requests \$931.00 she says is outstanding. A portion of that is

\$70.00 the applicant says the respondent improperly held back for keys not returned. The applicant represents herself.

2. The respondent says that a job claimed on the invoices was not done. The respondent also states that it was unhappy with the services performed and that it was overcharged. The respondent also says it was entitled to hold back \$70.00 for keys not returned and that it does not owe the applicant anything. The respondent is represented by an organizational contact.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 "she said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. 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 therefore decided to hear this dispute through written submissions.
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. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA: 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

7. The issues in this dispute are whether:
 - a. The applicant properly performed the cleaning services as set out in the agreement and, if so, what is the appropriate remedy.
 - b. The respondent was entitled to hold back \$70.00 for the cost of keys not returned.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove her claim. She bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

Did the applicant properly perform the cleaning services as set out in the agreement and, if so, what is the appropriate remedy?

10. The applicant claims she properly performed the cleaning services and requests \$931.00 in compensation. However, the applicant did not itemize the specifics of the work performed or how she arrived at the \$931.00 amount she is claiming.

11. The evidence shows that on April 16, 2019, the applicant sent the respondent cleaning cost quotes. She indicated that a regular clean was usually 6.5 to 8 hours and that a deep clean was between 12 and 17 hours depending on the type of unit. The highest price listed for a deep clean was \$595.00. It is unclear from the quotes whether the applicant was charging an hourly or flat rate.
12. It is undisputed that the applicant was hired by the respondent to perform cleaning services for multiple properties including a townhouse and a condo. The cleaning at issue was work done from June 2019 onwards. The applicant completed regular cleaning as well as a portion of the condo deep clean in that month. The applicant invoiced the respondent \$925.00 on July 2, 2019. The invoice said that two cleaners worked for five hours on the deep clean and billed \$350.00 in total for this work. The respondent paid this invoice in full on July 10, 2019.
13. The applicant then performed other cleaning jobs until she quit on July 11, 2019 and invoiced the respondent \$336.00 on July 18, 2019. The respondent paid this invoice on July 28, 2019, but it held back \$70.00 because keys were not returned. The applicant also invoiced the respondent \$1,252.25 on July 19, 2019, which the applicant admits duplicates some of the other invoices. She states that this is the total for all work done in July. It is undisputed that this includes the \$336.00 invoice.
14. The respondent asked the applicant to break down the invoice providing one invoice for each home. The respondent says that the applicant then sent the respondent an invoice for \$595.00. Since the invoices were broken down by property, the respondent says that this invoice was for the deep clean of the condo. This invoice is not in evidence although the applicant acknowledges that she broke up the invoice into three separate invoices. The respondent says the applicant is requesting payment of the July 18, 2019 \$336.00 invoice and the \$595.00 invoice, which totals the \$931.00 claimed.
15. Having reviewed the evidence I find that the \$931.00 claimed is for the \$336.00 invoice and the \$595.00 invoice relating to the deep clean of the condo. The

applicant has not set out any other detailed foundation for the amount she claims is owing.

16. The respondent argues that it already paid the \$366.00 invoice (minus the \$70.00 held back for keys). The respondent also argues the \$595.00 remaining is not for any additional work done by the applicant. It says that the applicant is claiming for the deep clean of the condo which was never completed after June 2019 and that it already paid for those hours. Both parties agree that the deep clean of the condo was never completed.
17. The applicant submits that the deep clean was not completed because the respondent miscommunicated with her and this is what prevented her from being able to complete it. She also submits that she told the respondent it would cost more than usual because construction took place in the unit previously making it more difficult to clean.
18. The respondent says that a ceiling had been repaired the prior season because of water damage but that this was in a lower bedroom and did not affect the rest of the unit. The respondent says that the property was not properly cleaned and it could not rent it in that state.
19. At this point a chronology of what occurred between the parties is helpful in determining what work was done and why the condo deep clean was not completed.
20. On June 29, 2019, the applicant told the respondent that she started work on the unit requiring the deep clean. On June 30, 2019, the respondent asked if it was completed and noted that if the applicant had to postpone any work it needed to know in case anybody wanted to book the property last minute. On July 1, 2019, the applicant said that she would complete it in the next couple of days. On July 3, 2019 the respondent again asked if it was done and the applicant responded that she was there right now.

21. The applicant states in the text that she was trying to get it done as quickly as possible but she was expecting to do it in May when she was doing other big jobs. The applicant works for other parties besides the respondent. She said that she was currently very busy and it was hard to fit the deep clean in. I note that this is after the applicant started the job in June, invoiced and was paid for part of it. There is no suggestion before this that the applicant told the respondent she could not do the work at this time of year.
22. On July 8, 2019, the respondent again texted the applicant and asked if a different unit was clean. The applicant responded that she was going later that day but that she had 4 other same day check-ins she had to do. The respondent's text message is cut-off, but the respondent then says that the deep clean was the bigger concern and there was always going to be minor things missed. The applicant responded and said she knew that the deep clean was not done to the standard she wanted it to be. The applicant said that she felt hard-pressed for time.
23. The applicant submits that the respondent only provided incomplete versions of the texts and that she would provide them in their entirety. She provided more of the texts from July 1 and 2 but they only add that she said she was "learning the ropes." I do not find that this represents the entirety of the text exchanges or that it supports the applicant's claim that the respondent was somehow responsible for the applicant not completing the deep clean.
24. On July 11, 2019, the respondent texted the applicant and said that it went to the unit and had to clean the unit itself. It asked the applicant what happened and why she did not make it that day to clean. It is unclear whether this refers to a different unit requiring regular cleaning or the condo where the deep clean was supposed to be taking place.
25. On July 12, 2019, the respondent sent the applicant an email acknowledging that the applicant had quit. The respondent indicated that it had issues with the cleaning services in other units as well. The respondent said that it would review the invoices but that the deep clean was not done and it was not paying for it.

26. Text messages were then exchanged between the applicant and what appears to be a representative of the respondent on July 14, 2019 saying it needed to get back a parking pass and a set of keys for one of the properties. The text message is chopped off, but it shows the applicant saying that “as for the keys I’m currently...” The end of that text is not in evidence but then the respondent’s representative tells the applicant to let it know when the applicant is back in town so it can pick them up.
27. On July 18, 2019, the applicant invoiced the respondent the \$336.00 invoice noted above. The evidence clearly establishes, and the parties agree, that the respondent paid \$266.00 toward this invoice and held back \$70.00 for the keys. Therefore, the applicant is not entitled to \$266.00 of this amount. I will discuss whether she is entitled to the \$70.00 held back below.
28. Based on the evidence, I also find that the applicant has not proved that she performed the additional work after the 10 hours in June 2019 which were paid. The applicant did not itemize any hours or indicate what had been done after this date on the deep clean. Also, the applicant’s text messages show her explaining that the cleaning was not done up to standard and the applicant admits that the deep clean was not completed.
29. The applicant submits that she should be entitled to the payment quoted for the deep clean anyway because she started the work and it was the respondent that prevented her from completing it. As noted, the applicant suggests that she would have had more time to do the work in May. However, she was hired to do the work on this condo after that and began it in June. It is not the respondent’s fault that the applicant realized that she did not have the time to complete the work satisfactorily. I also note that it was the applicant who quit before the work was completed.
30. Based on all of the evidence, I find that the applicant has not proven that she is entitled to an additional \$595.00 for the deep clean or any other cleaning service provided. The evidence does not establish that she did any additional work to justify payment. She is also not entitled to the \$266.00 already paid towards the \$336.00 invoice.

Was the respondent entitled to hold back \$70.00 for the cost of keys not returned.

31. The evidence establishes that the applicant kept the keys after she quit. The applicant claims that she never refused to return the keys and that the respondent did not say it was going to get new keys cut and charge the cost back to her. The applicant also submits that there is no proof that new keys were even cut.
32. The respondent says that the applicant refused to return the keys until full payment of the invoices was received. The respondent says that it offered to pay the \$70.00 withheld from the \$336.00 invoice if the applicant returned the keys.
33. Based on the evidence, it is clear that the respondent wanted the keys back and was willing to go to where the applicant was to retrieve them. The applicant has not provided a reasonable explanation for why she kept them. It appears that the applicant held on to the keys to inconvenience the respondent and force it to pay invoices for work that was not done or had already been paid. Because of this, I find that the applicant is not entitled to be reimbursed the \$70.00 the respondent held back for the return of the keys.
34. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful in her claim she is not entitled to have her tribunal fees or expenses reimbursed.

ORDER

35. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member