



Civil Resolution Tribunal

Date Issued: March 9, 2020

File: SC-2019-007518

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marco Development Corporation v. Hagen*, 2020 BCCRT 272

B E T W E E N :

MARCO DEVELOPMENT CORPORATION

APPLICANT

A N D :

LANE HAGEN

RESPONDENT

A N D :

MARCO DEVELOPMENT CORPORATION

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an office lease in a commercial building. The applicant, Marco Development Corporation (Marco), says the respondent, Lane Hagen, had a 12-month lease and vacated the rented offices 3 months before the lease term ended. Marco requests \$3,736.75, which is the cost of three months' rent minus the \$1,100.00 security deposit Marco kept. Marco is represented by an organizational contact.
2. Mr. Hagen says that Marco took over the property and told him in April 2019 it was increasing his rent by \$1,316.00 per month. Mr. Hagen says that he told Marco he would not pay the increased amount and Marco said he either had to pay or get out because Marco had someone else interested in leasing the entire floor where Mr. Hagen's offices were located. Mr. Hagen vacated at the end of May 2019.
3. In his counterclaim, Mr. Hagen requests return of his \$1,100.00 security deposit. In response, Marco says it will return the security deposit when Mr. Hagen pays the outstanding lease payments.

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 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 "it said, he 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.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. To what extent, if any, is Marco entitled to payment of three months' rent from Mr. Hagen?
 - b. Is Mr. Hagen entitled to the return of his security deposit?

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove its claim. Therefore, Marco has to prove its claim against Mr. Hagen on a balance of probabilities. In his counterclaim, Mr. Hagen has the same burden. 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.

To what extent, if any, is Marco entitled to payment of three months' rent from Mr. Hagen?

10. It is undisputed that Mr. Hagen signed a new lease with the previous owners of the building on September 1, 2018. Mr. Hagen had been renting the offices since 2017. Marco bought the building in April 2019 and took over the leases.
11. Marco has provided the 2018 lease which does not include a provision addressing notice to vacate. The lease specified that:
 - a. It was for 5 office spaces and the total rental area was based on the square footage of the offices.
 - b. It did not say that Mr. Hagen had to pay rent for square footage involving common areas.
 - c. It was for one year, ending on August 31, 2019. The cost was \$1,535.48 per month plus GST.
 - d. Mr. Hagen provided a \$1,1000 security deposit when he first leased the property in 2017. If Mr. Hagen defaulted under the terms of the lease the landlord could terminate the lease and keep the security deposit.
12. On April 9, 2019, Marco wrote to Mr. Hagen saying that it bought the property and the future rent should now be directed to them. The letter also said that Mr. Hagen's rent would be increasing by \$1,180.15 plus GST per month, because Marco was now charging additional rent for common areas.
13. Mr. Hagen says that he spoke to Marco on April 9, 2019 and told it that it could not change the terms of the lease and increase the rent that much. Mr. Hagen says that Marco told him that it was their building and they could do what they wanted. Mr. Hagen says that Marco told him he could either pay or move out because it had someone else who wanted to rent the entire floor. This is significant because, if I accept that Marco told Mr. Hagen this, it changes the terms of the lease and would allow Mr. Hagen to vacate the premises before the end of the lease term.

14. Marco's submission is significantly different on these facts. It says that it mistakenly gave notice to all the tenants in writing about the increase but then on April 10, 2019 it told the tenants that this was an error. Marco did not explain how it made this mistake. It also did not explain why it did not issue another formal letter. Marco has submitted two letters from tenants who agree that Marco ultimately did not go forward with charging them the increased amount. However, neither of them says that Marco informed them of this on April 10, 2019.
15. Marco also submitted ledgers indicating how much money it charged the tenants to prove that it did not go ahead with the rent increases. The tenants that are listed on the statements do not include all the tenants that were renting according to the April 2019 ledger. Therefore, it is unclear what happened to the other tenants. Also, the statements begin in June 2019, so they do not establish what happened in May 2019, which is the crucial time period.
16. Further, what happened with the other tenants does not mean that Mr. Hagen was given the same treatment. Mr. Hagen says that from the outset Marco wanted him to vacate because it had somebody else to rent his office space. This might not have been true of the other tenants. Marco did not respond to Mr. Hagen's submission that it told him it had somebody else willing to take over the lease.
17. Mr. Hagen says that Marco did not tell him on April 10, 2019, or ever, that he need not pay the additional rent and he continued to have discussions with Marco on April 15, 2019 and April 26, 2019. Mr. Hagen submitted phone records that shows he spoke with Marco on these dates. Mr. Hagen gave notice to vacate on April 26, 2019.
18. Marco provided a letter dated May 1, 2019 it says it sent to Mr. Hagen. The letter acknowledged it received Mr. Hagen's April 26, 2019 notice that he was going to vacate at the end of May 2019 and that it rejected the notice. Mr. Hagen says that Marco never sent him this letter. There is no proof of delivery. Also, there is no explanation as to why Marco would wait until the beginning of the next rental month

to respond to Mr. Hagen's notice to vacate. On the evidence, I do not accept that Marco delivered this letter to Mr. Hagen.

19. Based on the evidence, I find Mr. Hagen's version of what occurred at this time makes more sense than Marco's description of events. Marco did not provide convincing proof that it told Mr. Hagen on April 10, 2019 that it was not going to increase the rent. It also did not comment on Mr. Hagen's claim that Marco told him it had somebody else to take over the lease. I find Mr. Hagen's version of events more credible.
20. Based on the evidence, I find that Marco breached the terms of the set term lease by increasing the rent and claiming that Mr. Hagen was responsible for renting out areas the original lease agreement did not set out. I also find that Mr. Hagen did not breach the lease agreement by vacating early because Marco gave him permission to do so. Therefore, Marco is not entitled to lease payments for June, July, and August 2019.

Is Mr. Hagen entitled to the return of his security deposit?

21. Mr. Hagen wants his security deposit returned. He has presented evidence that he left the offices in a better condition than they were in when he first rented them. The video of the offices taken on the day Mr. Hagen vacated show them to be in a good condition. I also note that Marco is not stating that Mr. Hagen caused damage. Marco says it kept the security deposit because Mr. Hagen did not pay the rent for last three months remaining in his lease, not because the offices were damaged.
22. Because I have found that Marco was not entitled to keep the security deposit because it was Marco who breached the terms of the lease, and gave Mr. Hagen permission to vacate, Marco must return the security deposit to Mr. Hagen.
23. Mr. Hagen is also entitled to interest on the security deposit under the *Court Order Interest Act* (COIA) as of May 31, 2019, which was the end of the tenancy according to Mr. Hagen's notice and after Mr. Hagen vacated the premises. Marco should have returned the security deposit at that time. The interest equals \$16.69.

TRIBUNAL FEES AND EXPENSES

24. 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 Marco was unsuccessful in its claim, it is not entitled to have its tribunal fees reimbursed. Because Mr. Hagen was successful in his counterclaim, he is entitled to have his \$125.00 tribunal fees reimbursed. Neither party made a claim for expenses.

ORDERS

25. Within 30 days of this decision, I order Marco to pay Mr. Hagen a total of \$1,241.69 broken down as follows:

- a. \$1,100.00 in debt,
- b. \$16.69 in pre-judgment interest under the COIA, and
- c. \$125.00 in tribunal fees.

26. Mr. Hagen is also entitled to post-judgment interest under the COIA.

27. 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.

28. 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 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.

Kathleen Mell, Tribunal Member