



Civil Resolution Tribunal

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File: SC-2019-007117

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Manuel Castro (dba Ativo Skincare Company) v. Pacific Hawk Contracting Ltd.*, 2020 BCCRT 434

B E T W E E N :

MANUEL CASTRO (Doing Business As ATIVO SKINCARE
COMPANY)

APPLICANT

A N D :

PACIFIC HAWK CONTRACTING LTD. and DEVINDER DHILLON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Manuel Castro (doing business as Ativo Skincare Company), says it negotiated a commercial tenancy agreement with the respondents, Pacific Hawk Contracting Ltd. (PHCL) and Devinder Dhillon. The applicant says that during

negotiations he provided the respondents \$2,400 for a security deposit and \$1,200 for the first month's rent. The applicant says the respondents must return these amounts because the negotiations ended without any signed agreement.

2. The respondents disagree that they have any obligation to return the funds. They wish to keep the first month's rent but say they are willing to return the security deposit. Unlike the applicant, the respondents say the security deposit is \$1,200 and the first month's rent is \$2,400.
3. The applicant is represented by an employee or business associate, TC. The respondents are represented by Mr. Dhillon.

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

The Residential Tenancy Act

8. The tribunal generally does not take jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch. Although the evidence includes 2 draft residential tenancy agreements, it is undisputed that the parties intended to enter into a commercial tenancy. I find that the *Residential Tenancy Act* does not apply, and the tribunal has jurisdiction over this dispute under its small claims jurisdiction.

ISSUES

9. The issues are as follows:
 - a. Does the applicant have any valid claims against Mr. Dhillon?
 - b. How much are each of the security deposit and first month's rent?
 - c. Must the respondents return any of the security deposit or first month's rent?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. As I will explain below, this dispute emerged from the parties' expectations that they would sign a commercial tenancy agreement. The applicant provided both the security deposit and the first month's rent in anticipation of the tenancy. However, the parties never signed the tenancy agreement and the applicant never moved into

the rental unit. I must now determine the amounts of each of the security deposit and first month's rent, and who should keep them.

12. Some background is necessary. In late August 2019 the applicant saw a website ad for office and warehouse space for rent. The applicant's representative, TC, emailed Mr. Dhillon for further information and viewed the property.
13. On August 24, 2019, TC emailed Mr. Dhillon and advised that the applicant was interested. Mr. Dhillon provided a draft residential tenancy agreement for a tenancy to commence on September 1, 2019.
14. The first issue is whether the applicant has any valid claims against Mr. Dhillon. I find that he does not. The draft residential tenancy agreement named PHCL as the landlord and the applicant as the tenant. A second draft agreement in evidence shows the same thing. Although unsigned, I find the draft agreements shows the parties intended for the applicant to contract with PHCL as the landlord, and Mr. Dhillon acted in this dispute as PHCL's agent, either as its employee or principal. The applicant never asked for Mr. Dhillon to be added as a party to the tenancy agreement. There is no indication that Mr. Dhillon acted in his personal capacity in this dispute. I therefore dismiss all claims against Mr. Dhillon. This leaves the applicant's claims against PHCL.
15. On August 27, 2019, the applicant e-transferred \$3,600 to PHCL. The parties' emails on that date show that at the time the parties were still negotiating the terms of the tenancy agreement. Mr. Dhillon had emailed TC the first copy of a residential tenancy agreement. TC responded by asking Mr. Dhillon to use a commercial tenancy agreement instead. She also asked PHCL to ensure the carpets would be cleaned. The parties did not have a signed agreement at the time and had only agreed on the amount of monthly rent and the security deposit in the emails. Those amounts were broken down, as discussed below.
16. I now consider the second issue, which is the breakdown of the \$3,600 provided by the applicant to PHCL. As noted above, the respondents submit the security deposit

was \$1,200 and the first month's rent was \$2,400. I disagree and find the applicant provided \$2,400 for the security deposit and \$1,200 for the first month's rent.

17. The respondents provided little explanation for their position and key documents support the applicant's position. First, the draft residential tenancy agreements sent by the respondents said the security deposit was \$2,400 and not \$1,200. This is consistent with the applicant's position.
18. Second, the emails support the same conclusion. TC asked PHCL for a discount on the first month's rent. On August 26, 2019 Mr. Dhillon agreed to a 50% discount from the monthly rent of \$2,400 for the first month, so the discounted rent for that first month was \$1,200. Mr. Dhillon's associate, R, emailed on August 27, 2019 that PHCL also required \$2,400 as a security deposit.
19. After providing the security deposit and first month's rent, the applicant decided that he did not want to rent PHCL's property. In an August 29, 2019 email, TC explained that the applicant was concerned about the fact that the neighboring unit was a legal marijuana grow op. She asked for the return of \$2,400 for the security deposit and \$1,200 for the first month's rent. Mr. Dhillon refused to do this in a phone call with TC. There is no indication he disagreed with the breakdown for the security deposit and first month's rent.
20. I now consider the third issue, which is whether PHCL should return any of the security deposit or first month's rent. I find that PHCL must return both amounts for the following reasons.
21. The evidence supports the conclusion that the parties never entered into a tenancy agreement. The emails show that PHCL provided 2 draft residential tenancy agreements which were rejected by the applicant. TC asked the respondents to provide a commercial tenancy agreement instead. She explained in an email that the terms would be "vastly different" from those in a residential tenancy agreement. The respondents never fulfilled this request. The draft residential tenancy

agreements also provided a start date of September 1, 2019. TC asked for the applicant's money back before the start date on August 29, 2019, as noted earlier.

22. I find that the parties took certain actions in anticipation of the tenancy. For example, the respondents cleaned the rental unit carpets, provided the applicant access keys, and moved some furniture in anticipation of the tenancy. The applicant also provided the security deposit and first month's rent. However, the parties did not have any binding agreement in place at the time. The emails show the parties both intended to enter into a tenancy agreement through signing a written contract.
23. There is no evidence the parties had any agreement on what to do with the security deposit or first month's rent if they failed to come to terms.
24. Given the above, what should be done with the security deposit? Mr. Dhillon refers to the security deposit as a damage deposit. He says that the respondents are willing return the deposit to the applicant, though he says the deposit was only \$1,200.
25. As noted in *Wesbild Holdings v. 0899360 B.C. Ltd. & Nijjar*, 2011 BCPC 365 at paragraph 13, citing *Cerelle Corporation v. Bebe Cece Ventures Ltd. et al*, 2002 BCPC 225, a damage deposit is merely a security deposit to be held in trust for the tenant's benefit and returned at the end of the tenancy, less the cost of any damage to the premises caused by the tenant.
26. I find the security deposit was held in trust by PHCL for the applicant's benefit, in anticipation of the tenancy. It should now be returned because the tenancy never started. In my view the respondents' willingness to return the deposit is support for this conclusion. However, as I have found the deposit is actually \$2,400, I find that PHCL must return this amount rather than \$1,200, as submitted by the respondents.
27. What about the first month's rent? I find that, similar to the damage deposit, the first month's rent was held in trust by PHCL for the benefit of the applicant, to pay rent to PHCL when it became due. As the applicant and PHCL never entered into a binding tenancy agreement, PHCL must now return the first month's rent of \$1,200.

28. The respondents did not file a counterclaim. However, they say they should keep the first month's rent as compensation for 2 reasons. First, they had to prepare the rental unit for the applicant. Second, they were unable to find another tenant for September 2019 because the applicant said it was not interested at the end of August 2019.
29. While I acknowledge these submissions, the respondents prepared the rental unit during contract negotiations, without any agreement in place. I find that the respondents did so to make their rental unit more desirable to the applicant as part these negotiations. Either party was free to "walk away". The applicant is therefore not obligated to reimburse or compensate the respondents, and so I find there is no basis for any set-off from the award to the applicant.
30. If I am wrong on this point, I would still not order any set off or reduction in the amount owing to the applicant. The respondent did not provide any evidence of its loss, such as a cleaning receipts or invoices for preparing the rental unit.
31. In summary,
 - a. I dismiss the applicant's claims against Mr. Dhillon,
 - b. I find applicant provided PHCL a security deposit for \$2,400, and first month's rent of \$1,200, and
 - c. I find that PHCL must return both the security deposit and first month's rent (a total of \$3,600) to the applicant.
32. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$3,600 sum from August 29, 2019, the date of PHCL's refusal to return this amount, to the date of this decision. This equals \$45.58.
33. 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. I see no reason in this case not to follow that general

rule. I find the applicant is entitled to reimbursement of \$175 in tribunal fees. The applicant did not claim any dispute-related expenses and so I order none.

ORDERS

34. Within 14 days of the date of this order, I order PHCL to pay the applicant a total of \$3,820.58, broken down as follows:
 - a. \$3,600 for the return of the security deposit and first month's rent,
 - b. \$45.58 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175.00 in tribunal fees.
35. The applicant is entitled to post-judgment interest, as applicable.
36. The applicant's remaining claims, including all claims against Mr. Dhillon, are dismissed.
37. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
38. 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.

David Jiang, Tribunal Member