Civil Resolution Tribunal

Date Issued: May 11, 2020

File: SC-2019-009725

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Pearson Restaurant Group Ltd. v. Maronski,* 2020 BCCRT 516

B E T W E E N :

THE PEARSON RESTAURANT GROUP LTD.

APPLICANT

A N D :

GERARD MARONSKI

RESPONDENT

THE PEARSON RESTAURANT GROUP LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This claim is for the return of a commercial lease security deposit. The applicant claims that the respondent owes the return of a security deposit. The applicant claims $5,000.

2. The Dispute Notice incorrectly shows the applicant's names as The Pearson Restaurant Group .Ltd (Pearson Restaurant). Given that this appears to be a spelling error and the correct name of the applicant was used in their submissions, I have exercised my discretion under section 61 to direct the use of the applicant's correct name in these proceedings. Accordingly, I have amended the style of cause above.

3. The respondent, Gerard Maronski says he can keep the security deposit because Pearson Restaurant damaged the premises.

4. Mr. Maronski counterclaims against Pearson Restaurant. Mr. Maronski claims that Pearson Restaurant owes $5,000 for damaging the premises. Mr. Maronski claims Pearson Restaurant damaged the HVAC cooling system and patio railings. He also claims that Pearson Restaurant removed the ceiling system from the premises.

5. Pearson Restaurant says they did not damage the premises and they are not responsible for reasonable wear and tear.

6. There is issue whether Pearson Restaurant properly named as a party in this dispute because Pearson Restaurant is not in the lease.

7. Pearson Restaurant is represented by Cory Pearson, a business representative. Mr. Maronski is self-represented.

JURISDICTION AND PROCEDURE

8. 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.

9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

10. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. The tribunal's jurisdiction is limited to $5,000. I have considered whether the respondent's counterclaim exceeds the jurisdiction of this tribunal. It is undisputed that the respondent received a $5,700 deposit from Cory Pearson. The respondent claims that, after deducting the $5,700 deposit, he is still owed $12,517.50 for damages to the property. The respondent limited his counterclaim to $5,000 to comply with this tribunal's jurisdiction limits.

11. There is an issue whether the respondent's counterclaim is effectively a request to keep the $5,700 deposit and a request for damages of $5,000, which totals $10,700. If so, this would exceed the tribunal's jurisdictional limits.

12. I find that the counterclaim is not seeking an order to keep the security deposit. I find that the respondent had already received the $5,700 deposit before this dispute process started and there is no evidence saying the respondent needs an order to keep the deposit. Accordingly, I find that the respondent's counterclaim is within this tribunal's $5,000 jurisdiction limits and I find that I have jurisdiction to hear his counterclaim.

13. 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.

14. 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.

ISSUES

15. The issues in this dispute are:

    a. Is Pearson Restaurant properly named as a party in this dispute?

    b. Must Mr. Maronski return all or some of the $5,000 security deposit to Pearson Restaurant, and if so, how much must Mr. Maronski return?

    c. Must Pearson Restaurant compensate Mr. Maronski for unreasonably damaging the leased premises, and if so, how much?

EVIDENCE AND ANALYSIS

16. In a civil claim such as this, the applicant Pearson Restaurant must prove their claim, on a balance of probabilities. Mr. Maronski bears this burden on his counterclaim. I have only referenced the evidence and submissions as necessary to give context to my decision.

17. Mr. Maronski leased his commercial property (the lease) on the following terms:

    a. Cory Pearson was named as the tenant and JP was named as the guarantor. Mr. Maronski was named as the landlord.

    b. The lease was for 2 years, starting on August 1, 2017.

    c. Mr. Maronski held a $5,700 security deposit received from Mr. Pearson.

d. Mr. Pearson was required to return the property in a reasonable condition at the end of the lease. Mr. Pearson was not responsible for reasonable wear and tear.

e. The lease was signed by Mr. Pearson, JP and Mr. Maronski on July 20, 2017. There is no indication on the lease that the signatures were made as representatives of another entity.

18. I accept these undisputed lease terms as being accurate.

19. Mr. Maronski claims that Pearson Restaurant damaged the premises. Specifically, Mr. Maronski claims that the HVAC air cooling system needed to be repaired, patio railing needed to be replaced, and the T-bar ceiling system needed to be re-installed.

20. Pearson Restaurant says they are not responsible for these claimed damages. Pearson Restaurant says the HVAC system was not damaged at the end of the lease. They also argue that they are not responsible for replacing the patio railings because Mr. Maronski told them to leave the railing as is at the end of the lease. Pearson Restaurant argues that they are not responsible for the ceiling replacement. Pearson Restaurant says the ceiling was changed before the lease started in 2012.

21. Pearson Restaurant also argues that Mr. Maronski's claim for replacing the ceiling system is too late under the *Limitations Act*.

22. Pearson Restaurant claims that they are entitled to a return of the security deposit.

23. Before I consider these claims, I need to first determine whether Pearson Restaurant is a proper party in this dispute.

Is Pearson Restaurant properly named as a party in this dispute?

24. Pearson Restaurant is both the applicant and the respondent to the counterclaim. Both the claim and the counterclaim are based on the contractual rights and obligations in the lease.

25. However, the lease does not mention Pearson Restaurant. The lease says that Mr. Pearson is the tenant and JP is the guarantor in the lease. There is no evidence provided by either party that Pearson Restaurant is a tenant or that they have any rights or obligations under the lease. Accordingly, I find that Pearson Restaurant is not a party to the lease.

26. This tribunal has previously decided that a party cannot make a claim relating to the interests of a non-party (See, *Action Rooter Ltd. v. Alice Chen (dba Beaconsfield Inn)*, 2020 BCCRT 135). In that matter, there was a dispute between a plumbing contractor and a hotel manager about plumbing services provided to the hotel. The tribunal vice chair determined that the claim related to a dispute between the plumbing contractor and the non-party hotel, not with the hotel manager. In that situation, the vice chair held that the hotel manager did not have standing in the dispute and the matter was dismissed. Although this decision is not binding in this matter, I agree with this reasoning and apply it.

27. This matter is very similar. In the applicant's claim, Pearson Restaurant is requesting a return of the $5,000 security deposit. However, based on the undisputed terms of the lease, I find that Mr. Pearson paid the security deposit, not Pearson Restaurant. In addition, I find Mr. Maronski held the security deposit for Mr. Pearson's benefit, not for Pearson Restaurant's benefit. In addition, as stated above, I find that Pearson Restaurant is not even a party to the lease.

28. Pearson Restaurant has not provided any evidence to show that they have a right to Mr. Pearson's security deposit. Accordingly, I find that Pearson Restaurant does not have standing is this dispute to demand the return of the deposit and so I dismiss Pearson Restaurant's claims.

29. While I note that Mr. Pearson may have a legal interest in the return of the security deposit under the lease, Mr. Pearson is not a party to this matter. Accordingly, I will not make any findings in this matter about Mr. Pearson's potential rights or whether it damaged the premises. Any claim by or against Mr. Pearson would need to be made in a new application for dispute resolution.

30. Mr. Maronski's counterclaim against Pearson Restaurant has the same issue. Mr. Maronski claims that Pearson Restaurant breached the lease by damaging the premises. However, as stated above, I find that Pearson Restaurant was not a party to the lease. As such, I find that Mr. Maronski has not proved that Pearson Restaurant owes him any legal obligations.

31. I find that Mr. Maronski has not proved his counterclaim against Pearson Restaurant. I dismiss Mr. Maronski's counterclaim.

32. 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. Both Pearson Restaurant and Mr. Maronski were unsuccessful in their claims and counterclaims. Accordingly, I find that neither party is entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

33. I dismiss Pearson Restaurant's claim against Mr. Maronski. I also dismiss Mr. Maronski's counterclaim against Pearson Restaurant.

Richard McAndrew, Tribunal Member