



Civil Resolution Tribunal

Date Issued: May 21, 2020

File: SC-2019-010517

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kanini v. Asiedu*, 2020 BCCRT 556

BETWEEN:

ELIZABETH KANINI and NAOMI NYAKOAH

APPLICANTS

AND:

MARTIN ASIEDU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about property damage. The applicants, Elizabeth Kanini and Naomi Nyakoah, say the respondent, Martin Asiedu, caused damage to an Airbnb rental they shared during a trip to Toronto, Ontario. They seek \$1,505.66 for the cost of the rental, damage to the rental, and the cost of alternative accommodations. The

respondent says the parties were all intoxicated and Ms. Kanini was equally responsible for the damage.

2. The three parties in this dispute are all self-represented.

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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
5. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
6. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. A dispute that involves some

issues that are outside the tribunal's jurisdiction may be amended to remove those issues.

7. 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.
8. 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.

Preliminary Issue

9. Section 11(1)(a)(i) of the CRTA says the tribunal may refuse to resolve a dispute if it considers that the dispute would be more appropriate for another legally binding process or dispute resolution process.
10. I note that in this dispute, the respondent did not raise the issue of jurisdiction. I infer that he was not aware of this procedural consideration because he is self-represented. Since the incident occurred in Ontario, I asked the parties to provide submissions on whether the tribunal had jurisdiction to hear this matter.
11. The applicants say the tribunal has jurisdiction because despite where the incident occurred, the parties are resident in British Columbia, and the original agreement to share the rental costs was formed in British Columbia. The applicants also say it would be very expensive and inconvenient to travel to Ontario to resolve this dispute.
12. The respondent says the dispute should be resolved in Ontario. He says the parties discussed paying for the damage while in Toronto. He also says while he is currently residing in British Columbia, this is not permanent. In addition, he says travelling to Toronto is not inconvenient for him.

13. In order for the tribunal to have jurisdiction, there must be a real and substantial connection between British Columbia and the facts in the dispute. If the tribunal has jurisdiction but a party argues that some other forum is better for resolving the dispute, the test to be applied is called *forum non conveniens* (inconvenient forum) (see *Club Resorts Ltd v. Van Breda*, 2012 SCC 17).
14. The Supreme Court of Canada stated in *Club Resorts Ltd.* that presumptive connecting factors should be considered for determining whether there is a real and substantial connection including whether:
 - a. the respondent lives or carries on business in the province,
 - b. the tort (wrongful act) was committed in the province, and
 - c. a contract connected with the dispute was made in the province.
15. The parties are all resident in British Columbia. Whether the respondent plans on leaving British Columbia in the future is irrelevant. The issue is where he currently resides. Since the respondent's current mailing address is in Vancouver, I find he lives in British Columbia. I also find the agreement to share accommodations and travel arrangements was made in British Columbia
16. In addition, in the recent decision in *Buhler v Lewis*, 2020 BCSC 485, the court held that it had jurisdiction over a motor vehicle collision that occurred in the state of Arizona. Even though the collision occurred in another country, the court held there was a real and substantial connection since the plaintiff passenger and defendant driver were both ordinarily resident in British Columbia at the time the proceedings commenced. Based on *Buhler*, I find that even though the incident occurred in Ontario, there is still a real and substantive connection between the dispute and British Columbia.
17. According to the Supreme Court of Canada's decision in *Club Resorts Ltd*, the burden then shifts to the respondent to establish that even though the tribunal has territorial jurisdiction, it should decline to exercise it if British Columbia is not a

convenient forum. The respondent must establish that Ontario is in a better position to dispose of the litigation thoroughly and efficiently (see *Buhler* paragraph 32). I find that the respondent has not met this burden.

18. Based on my reasons, I find that the tribunal has jurisdiction to resolve this dispute.

ISSUES

19. The issues in this dispute are:

- a. to what extent the respondent is responsible for the damage to the Airbnb rental, and
- b. whether the respondent is responsible for the cost of the Airbnb rental and alternative accommodations in Toronto.

EVIDENCE AND ANALYSIS

20. In a civil claim such as this, the applicants bear the burden of proving their claim on a balance of probabilities. I have read all the parties' evidence and submissions, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

21. The parties travelled to Toronto, Ontario from November 21, 2019 to November 25, 2019. While there, they planned on sharing a one-bedroom apartment they rented through Airbnb (rental). The applicants say that on the first night of their trip, the respondent became intoxicated and damaged the rental. They say the parties vacated the rental the next day so that the owner could repair it for the next guest. They also say Ms. Kanini paid the owner for the damage and had to stay in a different hotel for the rest of the trip.

22. The applicants seek compensation from the respondent not only for the cost of the damage but also for the cost of the rental and of the hotel. Based on receipts and e-transfer records, I accept that the applicants paid \$389.89 to the rental owner for

repairing the damage and \$503.20 for their share of the rental cost. The applicants did not provide a receipt for the hotel they stayed in after leaving the rental and I discuss this issue further below.

23. The respondent says that while he caused some damage, Ms. Kanini contributed to it as well.

To what extent did the respondent damage the Airbnb rental?

24. As mentioned above, the applicants say after arriving in Toronto, the parties had some drinks in the rental and then at a bar. They also say as the evening progressed the respondent became emotional and was acting “weird”. Due to his behavior, the parties returned to the rental.

25. The applicants say the respondent became argumentative, confrontational, and may have been hallucinating. The applicants provided an audio recording of the respondent in which he appeared to be confused about who he was talking to. They also say the respondent punched holes in the wall, damaged a door, threw pictures and a clock on the floor, threw furniture into the hallway, and spilled juice in the kitchen. The applicants provided a photo of 2 holes in a wall. In addition, the applicants provided a video recording made in the hallway outside the rental. The recording was very brief and showed the following:

- a. A fold away bed and pillow lying on the floor,
- b. A female (who I infer was one of the applicants) picking up items from the floor and placing them in an empty suitcase,
- c. A male (who I infer was the respondent) carrying a lamp and a white towel or robe out of a doorway and placing it in the hallway beside the foldaway bed.

26. The respondent says Ms. Kanini is equally responsible for the damages. He says “things like lamps” in the rental broke during a physical altercation he had with Ms. Kanini. From his submissions, I find the respondent’s memory of the events on November 22, 2019 is unreliable. The respondent admits that he did not remember

much after the parties went to the bar. He also says he did not remember taking a taxi or putting things in the hallway. He admits he punched a hole in the wall once but did not remember why. He also says he could not remember “anything” the next morning.

27. By comparison, the applicants’ testimony is clear, detailed, and consistent with the evidence as a whole. For this reason, I prefer the applicants’ testimony of what happened on November 21, 2019. Based on the applicants’ evidence, I find the respondent was solely responsible for the damage to the rental. I also find the respondent has failed to prove Ms. Kanini contributed to any of the damage to the rental.
28. The respondent says his drink may have been tampered with while he was at the bar. He seeks an order for production of his medical records from “CAMH”, where I infer he received medical treatment while in Toronto. Although tribunal rule 8.2 provides that the tribunal can order a person to produce records, I decline to do so. The respondent did not provide evidence of any attempts he made to obtain records from “CAMH”. Also, the respondent did not provide the proper legal name or address for “CAMH”. Finally, I find the respondent’s medical records are not relevant to the issue of whether Ms. Kanini contributed to the rental’s damage.
29. The respondent also says the applicants left his luggage at the rental and his I.D., bank cards, and cellphone were missing. However, since the respondent did not make a counterclaim, I will not address this issue.

Is the respondent responsible for any of the costs claimed by the applicants?

30. As mentioned above, I accept the applicants paid \$389.89 to the rental’s owner for the cost of the repairs. I note that the receipts provided by the applicants for handyman services, a new door, a new door handle, and a new lamp totalled \$391.89. The applicants did not explain the discrepancy and I find it is a mathematical error and nothing turns on this. I find that since the respondent

caused the damage to the rental, he is responsible for reimbursing \$389.89 to the applicants for the amount they paid the owner.

31. The applicants provided a receipt for \$755.30 for the rental. They say the cost was divided equally between the parties with each paying \$251.76. The applicants seek \$503.20 for their share of the cost since they were unable to use the rental. Again, I note that $\frac{2}{3}$ of \$755.30 is \$503.46. However, the discrepancy is minor and I accept the applicants' calculations. The applicants did not state whether they were able to seek a refund from the owner for the rental. Since the applicants were unable to use the rental due to the respondents' actions, I find the respondent is responsible for the applicants' share of the rental cost. I award the applicants \$503.20.
32. The applicants also say they had to stay at a hotel for the rest of their trip after the respondent damaged the rental. They seek an additional \$612.57 for the expense. The applicants did not provide a receipt for the hotel. I find despite what happened, the applicants still had the opportunity to enjoy the rest of their trip from November 22 to November 25, 2019. I also find the applicants would have paid for accommodations in Toronto regardless of the respondent's actions since the original plan was to stay until November 25, 2019. Finally, I find that awarding the applicants both the cost of the rental and of the hotel room would be double recovery and I dismiss their claim for reimbursement of their hotel expenses.
33. The respondent says the applicants did not have to stay at another hotel because Ms. Kanini had family in Toronto they could have stayed with. I find the respondent's statement is speculative and give it no weight. There is no evidence that, even if Ms. Kanini had family in Toronto, they were willing to have both applicants stay with them for 4 days.
34. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled to pre-judgement interest on \$893.09 from November 25, 2019, the date the trip ended, to the date of this decision. This equals \$8.59.

35. 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 applicants are entitled to reimbursement of \$125 in tribunal fees. The applicants did not claim dispute-related expenses.

ORDERS

36. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$1,026.68, broken down as follows:

- a. \$893.09 for damages,
- b. \$8.59 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in tribunal fees.

37. The applicants are entitled to post-judgment interest, as applicable.

38. 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.

39. The Minister of Public Safety and Solicitor General has issued a Ministerial Order 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.

40. 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.

Rama Sood, Tribunal Member