



Civil Resolution Tribunal

Date Issued: June 3, 2020

File: SC-2020-001830

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cheale v. Berry*, 2020 BCCRT 615

B E T W E E N :

KEVIN CHEALE and KC PREC MAINTENANCE DIVISION

APPLICANTS

A N D :

DAVID BERRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about property management expenses. The applicants, Kevin Cheale and KC Prec Maintenance Division, say they performed property management services for the respondent, David Berry, who owns a rental house. The applicants say Mr. Berry owes them \$421.31 for utility bills, \$84.00 for cleaning expenses, and \$591.36 for maintenance work at the house, plus reimbursement of

the applicants' \$892.50 payment to Mr. Berry for fees related to changing rental brokers. The claims total \$1,989.17.

2. Mr. Berry says the utility bill amounts have already been paid and deducted from his house rental income. He says the applicants are to blame for telling him to release a tenant's damage deposit, and then later charging him cleaning and maintenance expenses that should have been withheld from that deposit. Mr. Berry also says that the vacating tenant has agreed to pay the cleaning charge, and that Mr. Berry was not liable for the maintenance expenses under his property management agreement. In addition, Mr. Berry says the applicants agreed to reimburse an \$892.50 cancellation fee Mr. Berry paid when he followed the applicants to a new rental broker, and that the parties completed that agreement. So, the respondent says he owes the applicants nothing.
3. Kevin Cheale represents himself and KC Prec Maintenance Division in this dispute. David Berry is self-represented.

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. This dispute involves a "they said, he said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the

court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the tribunal's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I 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 or stop doing 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. Must Mr. Berry reimburse the applicants for alleged utility bill payments, and if so, how much?
 - b. Is Mr. Berry liable to the applicants for a cleaning fee, and if so, how much?
 - c. Is Mr. Berry liable to the applicants for maintenance expenses, and if so, how much?
 - d. Must Mr. Berry refund the applicants' \$892.50 payment to Mr. Berry?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

10. It is undisputed that the applicants provided rental property management services to Mr. Berry, such as maintenance and cleaning. The parties' submissions each say Mr. Berry hired a rental broker, who acted as his rental agent. The parties say Mr. Berry engaged the applicants through the rental broker. During the period they managed Mr. Berry's house rental, the applicants chose to switch from working with this first rental broker to a second rental broker.
11. From the parties' submissions, I expect there were written service agreements between the applicants and the 2 rental brokers. I also expect there were written broker agreements between Mr. Berry and the 2 rental brokers, and one or more written property management agreements between the applicants and Mr. Berry. However, none of the parties provided copies of any written agreements, apart from Mr. Berry submitting a few sentences of what he said was a property management agreement between himself and the applicants. As a result, I find there is no reliable evidence of the parties' obligations to one another under any contracts. The nature of the parties' relationships with the rental brokers is similarly unclear. However, I was able to decide this dispute based on other evidence.
12. I also note it is not clear whether Kevin Cheale or KC Prec Maintenance Division, or both, agreed to any property management contracts or are allegedly owed the disputed amounts. But given my ultimate conclusion in this dispute, nothing turns on this.

Must Mr. Berry reimburse the applicants for alleged utility bill payments, and if so, how much?

13. It is undisputed that the utility bills at the rental house were paid out of the rent. The applicants say that when a particular tenant vacated the house, the applicants received utility bills covering a period when the tenant still resided in the house, and for a time when the house was unoccupied and rent was not being collected. The applicants say that because these utility accounts were in their names, they could not let them go unpaid or they would risk having all of their utility accounts shut

down. So, the applicants say they paid these utility bills personally, and that Mr. Berry should reimburse them.

14. In particular, the applicants say they are owed \$282.93 for payment of an electricity bill dated October 24, 2019. That bill was addressed to the first rental broker, not the applicants. I infer that Mr. Berry's rental brokers may have acted on behalf of Mr. Berry, as his agent, for some purposes such as collecting rent and paying expenses. But as noted above, there is no proof of the extent of the rental brokers' authority, if any. The applicants also say they are owed \$39.94 for a July 10, 2019 gas bill addressed to a K.M. at the first rental broker's address, as well as an October 29, 2019 \$98.44 gas bill addressed to K.M. at the applicants' address. The submissions do not indicate who K.M. is.
15. These bills do not identify the applicants as the account holders responsible for payments. The electricity bill, addressed to the first rental broker, said that the electricity account might be referred to a collection agency if the bill was not paid immediately. But the evidence does not suggest that any of the applicants' utility accounts would be affected by non-payment of these bills. As a result, I am not persuaded by the applicants' stated reason for allegedly paying the bills, namely to preserve their standing with the utility companies.
16. The applicants provided a printed list of bill payees from what appears to be an online banking website. The list stated that the above 3 bill amounts were paid to their associated utility account numbers on November 5, 2019. However, the list does not show who made those payments, how the payments were made, or the bank account numbers or bank account owners associated with the online banking account or the payments. There is no other evidence showing that the applicants paid the 3 utility bills. On balance, I find this list of bill payees does not demonstrate that the applicants paid the utility bills.
17. Also, the evidence before me does not suggest that Mr. Berry instructed the applicants to pay the 3 bills, or that the applicants were required to do so under a contract.

18. Further, the applicants admit that Mr. Berry's second rental broker provided proof that the second rental broker paid the 3 utility bills directly to the utility companies. The applicants did not submit this proof. The applicants say the second rental broker paid the bills after it was notified that the applicants had already paid the bills, resulting in double payment and a credit on the utility accounts. I do not find this argument persuasive, as there is no evidence confirming when the second rental broker paid any of the bills, or showing a resulting credit on the utility accounts.
19. On the evidence before me, I find the applicants have failed to meet their burden of proving they paid the 3 utility bills and that Mr. Berry must reimburse those amounts. I dismiss the applicants' claim for reimbursement of the 3 utility bills totalling \$421.31.

Is Mr. Berry liable to the applicants for a cleaning fee, and if so, how much?

20. The applicants say a tenant forgot to clean a bathroom in the house when moving out, so the tenant agreed that the applicants could clean it. The applicants say they hired a cleaning person to do the work, who charged \$84, which the applicants paid. However, there is no evidence before me showing an \$84 payment to a cleaning person.
21. The applicants say the tenant never paid the applicants' \$84 cleaning invoice, and that they were unable to collect that amount when they later switched to a different rental broker who was not Mr. Berry's rental broker. The applicants did not explain why that affected their collection from the tenant. So, the applicants say they decided to charge Mr. Berry \$84 for the cleaning. The applicants submitted an August 3, 2019 cleaning invoice for \$84, addressed to the second rental broker.
22. Mr. Berry says the applicants admit the tenant agreed to pay for the cleaning. Mr. Berry also says that any cleaning fees incurred because the tenant failed to clean the bathroom should have been covered by the rental security deposit, but that the applicants instructed him to refund the entire deposit to the tenant.

23. I find that if the applicants paid any bathroom cleaning fees, they arose out of an alleged agreement between the applicants and the tenant. I find Mr. Berry was not involved, and is not responsible for the invoiced cleaning fees, which I find Mr. Berry did not authorize. I dismiss the applicants' claim for \$84 in cleaning fees.

Is Mr. Berry liable to the applicants for maintenance expenses, and if so, how much?

24. The applicants say they changed two door locks at Mr. Berry's house and patched a small hole in a wall. On August 2, 2019, they invoiced the second rental broker \$591.36 for labour, materials, and GST for this work.

25. The applicants say Mr. Berry authorized lock changes and hole patching work. Mr. Berry denies this. Mr. Berry says his contract with the applicants required his prior authorization for expenses over \$500, which he did not provide, and that door lock and key change expenses were waived. I place limited weight on the purported contract excerpts provided by Mr. Berry, as the contracts themselves were not submitted and I cannot verify that the parties agreed to those terms.

26. However, I find the applicants submitted no evidence showing that Mr. Berry authorized lock changes or hole patching at his expense. According to an October 9, 2019 email from the second rental broker to the applicants, they had no record of Mr. Berry's approval for lock changes or hole patching. Further, on balance, I find that Mr. Berry returned the former tenant's security deposit based on the applicants' assurance that no amounts needed to be withheld, including for hole repair or lock replacement.

27. In addition, I find there are no receipts, photos, or other evidence showing that the applicants purchased new locks or keys, that there was a hole in the wall of the house, or that the applicants repaired a hole or changed locks, or paid for hole repairs or lock changes.

28. Having considered the evidence, I find the applicants have failed to show that Mr. Berry requested a hole repair and lock changes, that the applicants performed or

paid for those maintenance tasks, or that Mr. Berry was required to pay for that work. So, I find Mr. Berry is not liable to the applicants for these maintenance expenses totalling \$591.36, and I dismiss the applicants' claim for them.

Must Mr. Berry refund the applicants' \$892.50 payment to Mr. Berry?

29. The applicants' detailed submissions say that while they were managing Mr. Berry's rental house, the applicants decided to switch from an association with the first rental broker, to an association with the second rental broker. At the applicants' request, Mr. Berry also switched from using the first rental broker to using the second rental broker.
30. According to the applicants' original claim, Mr. Berry was charged an \$892.50 fee to switch from the first rental broker to the second rental broker. The applicants' later submissions confirm that Mr. Berry made the switch.
31. Mr. Berry says he had a verbal agreement with the applicants that if he switched brokers with them, the applicants would reimburse the \$892.50 cancellation fee he owed the first rental broker, which they did. Mr. Berry also says, and the applicants agree, that the applicants later switched back to the first rental broker. Mr. Berry says he did not switch back, and there was no further agreement about cancellation fees. On balance, it appears the applicants claim a refund of the \$892.50 payment because Mr. Berry did not switch back to the first rental broker with them, as discussed below.
32. I find the applicants' version of events changes over time, and is poorly supported on the evidence before me. In their original claim, the applicants say Mr. Berry changed his mind and did not follow them to the second rental broker after they reimbursed him \$892.50, and so they say that amount should be refunded to them. But the applicants contradict that statement in their later submissions, in which they confirm that Mr. Berry did switch to the second rental broker with them.
33. In those later submissions, the applicants say the second rental broker failed to waive some management fees for Mr. Berry. So, the applicants say they agreed to

pay Mr. Berry \$892.50 because Mr. Berry had financial difficulties and medical bills, and the applicants believed the second rental broker would refund that payment to them, which it did not. I find there is no evidence that Mr. Berry was owed a management fee waiver, that the applicants' payment was for a management fee waiver, that Mr. Berry had financial difficulties or medical bills, or that there was a basis for the second rental broker refunding this payment.

34. I prefer Mr. Berry's version of events which, unlike the applicants' version, aligns with the evidence before me and does not contain obvious contradictions. On balance, I find the parties had an oral agreement that Mr. Berry would switch from the first rental broker to the second rental broker and the applicants would reimburse his \$892.50 cancellation fee. I find that each party fulfilled the terms of this agreement. I find there was no agreement that Mr. Berry would later switch back to the first rental broker, or otherwise "follow" the applicants to other brokers. So, I find the applicants properly paid the \$892.50 to Mr. Berry, and there is no basis for refunding it. I dismiss the applicants' claim for the \$892.50 cancellation reimbursement.

TRIBUNAL FEES, EXPENSES, AND INTEREST

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. The applicants were unsuccessful in this dispute, and Mr. Berry did not pay any fees. No dispute-related expenses were claimed. So, I decline to order any tribunal fees or expenses.

ORDER

36. I dismiss the applicants' claims, and this dispute.

