



Civil Resolution Tribunal

Date Issued: June 9, 2020

File: SC-2019-010902

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fitzpatrick v. Chang*, 2020 BCCRT 638

BETWEEN:

DANIELLE FITZPATRICK, GRACE DONNELLY, GRACE KEYES, and
ORLA COLLINS

APPLICANTS

AND:

CHIA-HSUAN SABRINA CHANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a deposit for a short-term residential rental. The applicants Danielle Fitzpatrick, Grace Donnelly, Grace Keyes, and Orla Collins say that they paid the respondent, Chia-Hsuan Sabrina Chang, a deposit of \$2,250 but later

decided not to rent the respondent's property. As the respondent refused to return the deposit, the applicants ask for an order that the respondent refund their \$2,250.

2. The respondent says that the deposit is non-refundable, and that she applied it towards losses she says she experienced as a result of the applicants changing their mind about renting her property.
3. The applicants are represented by a family member. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT generally does not take jurisdiction over residential tenancy disputes as these are decided by the Residential Tenancy Branch (RTB). The applicants brought their dispute to the RTB, but an RTB adjudicator determined that the parties' dispute concerned living accommodation occupied as vacation or travel accommodation, to which the *Residential Tenancy Act* (RTA) does not apply. Accordingly, I find that the parties' dispute concerns a contractual claim that is within the CRT's small claims jurisdiction.

7. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

9. The issue in this dispute is whether the applicants are entitled to a refund of their deposit.

EVIDENCE AND ANALYSIS

10. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
11. The applicants live in another jurisdiction and were looking for a suite to rent in British Columbia between early June and late August of 2019. The applicants were interested in the respondent's 4-bedroom suite, which she had advertised for rent on an on-line platform. Ms. Donnelly communicated with the respondent and her property manager, MC, about the possibility of the applicants renting the suite.
12. In a May 4, 2019 text message, Ms. Donnelly indicated that the applicants would like to apply to rent the suite. There was a discussion about supplying references, but it is not clear whether (or when) this was done. There also appears to have been a discussion about the applicants providing a deposit, but not what this amount would signify or on what terms it would be paid.

13. On May 5, 2019, MC emailed 2 proposed addenda to the rental agreement to Ms. Donnelly. It is not clear when the lease agreement itself was sent. As her messages were not going through to MC, Ms. Donnelly sent a message to the respondent on May 6, 2019 that “our group would be happy to proceed”. MC sent another addendum in a May 6, 2019 email message. The applicants sent the \$2,250 deposit by electronic transfer on May 6, 2019, and the respondent deposited this into her account on May 7, 2019.
14. Ms. Donnelly emailed MC on May 10, 2019 to ask for various items of missing information to be inserted into the rental agreement form and some changes to the addenda. While the respondent says these changes were made, the applicants say the proposed agreement still contained missing information and terms that caused them concern.
15. The applicants apparently advised the respondent on May 11, 2019 that they did not wish to proceed with renting the home. While it is not clear from the evidence before me how this was communicated, the respondent replied in a May 13, 2019 email message. The respondent stated that the deposit the applicants paid was non-refundable as it was a “commitment to start a lease”. The respondent explained that the purpose of the deposit was “for the tenant to secure a rental AND to commit to renting the place”, and that she had stopped searching for tenants when she received it. As she now had to start looking for tenants again, the respondent said that the deposit would be used to compensate for lost rent and lost time for MC and herself.
16. The applicants’ position is that they did not have an agreement with the respondent. They say that the respondent asked them to pay the deposit before sending the agreement for their consideration. The applicants said that they did so because they are not familiar with Canadian tenancy laws. They say that they were concerned with some of the terms and what they perceived as missing information in the agreement, and decided not to proceed with the rental.

17. The respondent's position is that she had an agreement with the applicants, and says that the fact that they sent the deposit approximately 5 hours after they received the lease and addenda indicates their acceptance of the terms. The respondent says she is entitled to keep the deposit because the amount of lost rent and additional fees she had to pay MC to find new tenants was higher than the amount of the deposit she received from the applicants.
18. The applicants, the respondents, and MC were in different time zones when they communicated about the proposed rental. Therefore, I am not satisfied that the time stamps on the various messages establish a firm chronology of the events. Even if they do, I do not find that they are determinative of the issue before me.
19. Although the respondent says that she is allowed to keep the deposit under the RTA, the RTB has determined (and I agree) that the RTA does not apply to this dispute. Accordingly, the retention or return of the deposit is governed only by the terms of the parties' agreement. As I will discuss below, I have determined that the parties did not have any form of agreement about whether the deposit was non-refundable.
20. I find that the applicants did not indicate that they accepted the terms of the agreement and addenda. The evidence shows that they had a number of concerns about key terms. Although the price of the rental was fixed, the parties had not agreed on the manner in which it would be paid or, more significantly, the term of the rental. The respondent says the term was to start on May 15, but the applicants wanted a start date of June 3. In addition, the first addendum contained a large number of detailed behavioural expectations, restrictions on the use and care of the rental property, and monetary penalties for late payment and other circumstances that do not appear to have been discussed by the parties. Further, the Early Termination Addendum provided for a lease break fee of 2.5 months' rent. I find that the evidence does not support a conclusion that the applicants agreed to any of these terms, and I find that their request for modifications is indicative of ongoing negotiations rather than an agreement.

21. I find that the parties did not have an agreement about the rental (either written or oral) at the time the applicants sent the deposit. The evidence before me does not establish that the parties had otherwise agreed that the deposit would be non-refundable. The proposed lease and addenda addressed only what would happen to the deposit in the context of a rental agreement, not what would happen if the agreement did not proceed. Although the respondent may have intended that any deposit she received would be non-refundable, I find that the applicants were not aware of this intention and did not agree to it.
22. I find that the parties did not agree that the deposit would be non-refundable. As the rental agreement was not finalized, the respondent is not entitled to retain the deposit under the terms of her proposed lease. Therefore, the applicants are entitled to the return of the \$2,250 deposit.
23. The *Court Order Interest Act* applies to the CRT. The applicants are is entitled to pre-judgment interest on the deposit from the date the respondent refused to return it (being May 13, 2019) to the date of this decision. This equals \$47.36.
24. Under section 49 of the CRTA and CRT rules, the CRT 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 and \$125 in dispute-related expense in the form of filing fees at the RTB, photocopying, and mail costs. I find that these amounts are reasonable in the circumstances.
25. As the respondent was not successful, I dismiss her claim for reimbursement of dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$2,547.36, broken down as follows:
 - a. \$2,250 as reimbursement of the deposit,

- b. \$47.36 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$250 for \$125 in tribunal fees and \$125 for dispute-related expenses.

27. The applicants are entitled to post-judgment interest, as applicable.
28. Under section 48 of the CRTA, the CRT 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 CRT's final decision. 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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Lynn Scrivener, Tribunal Member