



Civil Resolution Tribunal

Date Issued: June 15, 2020

File: SC-2019-009220

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bee Haven Consulting Inc. v. Eagle View Child Development Inc.*,
2020 BCCRT 663

B E T W E E N :

BEE HAVEN CONSULTING INC.

APPLICANT

A N D :

EAGLE VIEW CHILD DEVELOPMENT INC.

RESPONDENT

A N D :

BEE HAVEN CONSULTING INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over a commercial lease for daycare space.
2. The applicant and respondent by counterclaim, Bee Haven Consulting Inc. (Bee Haven), claims that the respondent and applicant by counterclaim, Eagle View Child Development Inc. (Eagle View), owes it \$3,375 under the parties' sublease agreement.
3. The tenant Eagle View says that Bee Haven breached their sublease. It says the leased premises were not in reasonably clean and repaired condition at the time of Eagle View's possession. In its counterclaim, Eagle View seeks a total of \$2,941.43 from Bee Haven for cleaning (\$1,469.45), municipal dumping fees and mileage (\$84.72), emergency light repairs (\$505.26), and security access costs (\$882).
4. The parties are each represented by an employee or corporate officer.
5. For the reasons that follow, I find that Eagle View must pay Bee Haven \$3,375 as agreed under the sublease. I find that Eagle View is not entitled to any reimbursement for its claimed expenses and I dismiss its counterclaim.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Does Eagle View owe Bee Haven the claimed \$3,375.00 under the sublease?
 - b. To what extent, if any, must Bee Haven reimburse Eagle View \$2,941.43 for its claimed expenses?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Bee Haven bears the burden to prove its claims on a balance of probabilities. Eagle View bears the same burden on the counterclaim. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. On August 31, 2019, Eagle View signed a 1-year commercial sublease agreement with Bee Haven for office space (premises), which Eagle View intended to use as a

daycare. Bee Haven was undisputedly running a daycare on the premises up to about July 2019. Eagle View took possession of the premises on September 1, 2019. A copy of the signed sublease is in evidence. It shows that Bee Haven held the head lease and Eagle View was the subtenant.

Does Eagle View owe Bee Haven the claimed \$3,375 under the sublease?

13. The issue in Bee Haven's claim is an outstanding payment of \$3,375 for used furniture and equipment (furniture) under article 9 of the sublease. While some items do not appear to be furniture, they are defined as such in the sublease. Article 9 states that Eagle View agreed to purchase Bee Haven's furniture at the premises for \$3,375. Eagle View did not pay for the furniture as agreed after it took possession of the premises.
14. There is no dispute that Bee Haven left the used furniture in the premises when it vacated, and Eagle View took possession of the furniture with the premises. Eagle View says some purchased "items" were not in working order, but then provided no details or evidence to support its assertion. I find there is insufficient evidence that the used furniture was other than what was agreed on.
15. I find that Eagle View must pay Bee Haven the claimed \$3,375 for the furniture as agreed under article 9 of the sublease.

To what extent, if any, must Bee Haven reimburse Eagle View \$2,941.43 for its claimed expenses?

16. As for the counterclaim, Eagle View says it expected the premises would be in move-in or "turn-key" condition for its daycare and it says they were not. It says Bee Haven breached the parties' sublease agreement because the premises were not in reasonably clean and repaired condition. It says the premises were very dirty with garbage, daycare toys and many other items left behind. It is unclear if any of these left items were part of the purchased "furniture". Eagle View says it had also expected that all safety equipment would be maintained and serviced. It says it learned only after moving in that the security lights needed repairing.

17. Bee Haven says the parties discussed that it would leave the extra daycare toys and that it had offered to professionally clean the floors and walls. It says Eagle View declined because Eagle View intended to re-paint and make alterations after taking possession. Bee Haven says they also discussed the extra toys. It says it paid for 1 extra month of the private waste disposal contract to account for any extra toys Eagle View did not want. However, Eagle View says only that the parties discussed the premises but then it does not specify what they discussed. Although Eagle View had the opportunity, it did not specifically dispute Bee Haven's statements about the cleaning, toys, or waste disposal. On balance, I accept those statements to be true.
18. I find Eagle View's stated expectation of a "turn-key" condition is not consistent with the sublease. Under article "7. Condition of Premises" the parties agreed that the subtenant, Eagle View, had inspected the premises and accepted them and all existing improvements in their present condition, on an "as-is" basis. Article 7 also says that the sublandlord, Bee Haven, is not required to make any repairs or improvements for Eagle View's benefit. Eagle View says it was represented by both a real estate agent and a lawyer when it agreed to the sublease. I find it was open to Eagle View to negotiate different terms or not enter into the sublease at all.
19. I also do not accept Eagle View's argument that the lease contained an implied term that the premises would be reasonably clean and repaired on the possession date. At law, there is a presumption against adding unexpressed terms to a contract (see *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107 and *Greater Vancouver Sewerage and Drainage District v. C.N.R. Company*, 2013 BCSC 1984). A sublease is a contract. I find the sublease terms are clear and unambiguous. I find it would be inconsistent with both the lease terms and the parties' pre-lease discussions to imply such a term here.
20. I find that Bee Haven was only required to leave the premises in the same "as-is" condition as existed on inspection. I find that Eagle View has not established that the premises were in any worse condition on possession than on inspection. The

evidence also does not support a finding that Bee Haven concealed any problems or issues with the premises. I find that Eagle View has not established that Bee Haven breached the sublease by failing to clean or repair the premises.

21. As mentioned, Eagle View also seeks \$882 to reset the security system access. It alleges that Bee Haven refused to provide its passcodes and usernames and so, it had to pay for the reset. Bee Haven says it gave Eagle View's officer the sign-in information and the building access fob. Bee Haven says it had no obligation to disclose confidential passcodes and usernames. Bee Haven says Eagle View was responsible for setting up its own security access at its own cost.
22. Article 9 of the parties' sublease says that Eagle View will pay for the alarm system, and any additional service that might apply. I find this includes resetting the alarm system. I find Bee Haven was not required under the sublease to provide Eagle View with its own passcodes and usernames. So, I find Bee Haven is not responsible for costs associated with resetting the security system access.
23. For all the above reasons, I find that Eagle View is not entitled to the claimed \$2,941.43 in expenses and I dismiss Eagle View's counterclaims.

Interest, Dispute-Related Expenses, and CRT Fees

24. The *Court Order Interest Act* (COIA) applies to the CRT and requires the CRT to add interest to a monetary judgment. I find that payment was due on September 1, 2019 when Eagle View took possession of the premises with the furniture inside. I find Bee Haven is entitled to pre-judgment interest on the \$3,375 outstanding payment from September 1, 2019 to the date of this decision. This equals \$52.11.
25. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT 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 \$200 in CRT fees.

26. In its application for dispute resolution, Bee Haven claimed \$369.60 in legal fees. It says it had to hire a lawyer because Eagle View refused to pay the agreed amount under the sublease, and it should recover this. Under CRT rule 9.5(3), for a small claims proceeding, the CRT will generally not order another party to pay another party any legal fees unless extraordinary circumstances apply. I find there is no evidence of any extraordinary circumstances here. I find Bee Haven is not entitled to reimbursement of legal fees.
27. As it was unsuccessful on the counterclaim, I dismiss Eagle View's claim for reimbursement of CRT fees. It claimed no dispute-related expenses.

ORDERS

28. Within 45 days of the date of this order, I order Eagle View to pay Bee Haven a total of \$3,627.11, broken down as follows:
 - a. \$3,375 as payment under the sublease,
 - b. \$52.11 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$200 in CRT fees.
29. Bee Haven is entitled to post-judgment interest, as applicable.
30. Bee Haven's remaining claim and Eagle View's counterclaims are dismissed.
31. 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 CRTs 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.

32. 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.

Trisha Apland, Tribunal Member