



Civil Resolution Tribunal

Date Issued: August 4, 2020

File: SC-2020-000962

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nielsen v. Villarreal*, 2020 BCCRT 864

BETWEEN:

CAROL NIELSEN

APPLICANT

AND:

SUSANA VILLARREAL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over vacation rental accommodation in Mexico.
2. The applicant, Carol Nielsen, rented a bungalow in Mexico from the respondent, Susana Villarreal. The parties entered into the rental agreement online. Ms. Nielsen says Ms. Villarreal failed to provide a safe and quiet environment and she had to

vacate the rental early and return to Canada. Ms. Nielsen seeks reimbursement of \$1,130 for rent, \$100 for a pet deposit, \$277 for alternative accommodation, and \$120 for a flight change. She also claims interest, as discussed below.

3. Ms. Villarreal disputes Ms. Nielsen's claims. She says that Ms. Nielsen was unhappy with the accommodation from the date of arrival. She says Ms. Nielsen unilaterally decided to vacate the rental and is not entitled to reimbursement of rent or damages. Ms. Villarreal says the pet deposit is not refundable because she used it to pay to clean-up after Ms. Nielsen's dog.
4. The parties are each self-represented.
5. For the reasons that follow, I find Ms. Nielsen is entitled to reimbursement of \$100 for the pet deposit. I have dismissed Ms. Nielsen's remaining claims.

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, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a

CRT 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.

8. In the circumstances here, I find that I am properly able to assess and weigh the written submissions and documentary evidence before me. Keeping in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary to fairly decide this dispute.
9. 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.
10. 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.

Preliminary Jurisdiction Issue

11. Ms. Villarreal says she "filed a law suit against [Ms. Nielsen] at the General Attorney in Mexico" and spoke to the police because she felt threatened by Ms. Nielsen after she moved out. However, Ms. Villarreal did not submit any additional information about a proceeding in Mexico. I considered asking the parties for further submissions on whether there are concurrent claims in Mexico, but I decided it was not required in the circumstances. Ms. Villarreal did not allege any loss and made no counterclaim for breach of contract in this CRT dispute. Ms. Villarreal describes her claims against Ms. Nielsen in Mexico as threat allegations after the rental ended and so, I find the claims in each forum are likely distinct. I also find no evidence that Mexico is a better forum to decide this dispute. Ms. Nielsen says both she and Ms. Villarreal are Canadian citizens with addresses in Canada and the monetary transactions were made through Canadian banks. Ms. Villarreal does not say otherwise, and submitted a Dispute Response and participated in the CRT process. Considering the CRT's mandate for speedy dispute resolution and the low value of

Ms. Nielsen's claims, I decided it would not be proportional to seek further submissions. I find the CRT's small claims jurisdiction applies to this dispute and it is not an abuse of process to decide Ms. Nielsen's claims here.

ISSUES

12. The issues in this dispute are:

- a. Did Ms. Villarreal breach the rental agreement? If so, what is the appropriate remedy?
- b. Is Ms. Villarreal required to reimburse Ms. Nielsen the claimed \$100 pet deposit?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant Ms. Nielsen, bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

14. The parties agree that they entered into a rental agreement for 73 days from December 18, 2019 to February 28, 2020 for \$1,834 CAD. There is no dispute that Ms. Nielsen paid Ms. Villarreal the full \$1,834 rent, plus a \$100 pet deposit in advance. There was no damage deposit other than the \$100 pet deposit. The parties agree there was also no cancellation term in their rental agreement.

15. Ms. Nielsen moved in on about December 18, 2019 and moved out early on January 14, 2020. Ms. Nielsen claims reimbursement of \$1,130 in rent, which she calculates as the remaining rental days. Ms. Nielsen argues that Ms. Villarreal was required to refund the remaining rent and find a new tenant after she vacated the bungalow. Ms. Nielsen says it was high season and Ms. Villarreal should have had no problem finding a new tenant. However, there is no objective evidence before me on the rental market conditions. I have insufficient evidence that Ms. Villarreal

could have reasonably found a replacement tenant on short notice for the remaining weeks.

16. I find the rental was a fixed 73 day term for \$1,834. I find that Ms. Nielsen would only be entitled to a rent refund if Ms. Villarreal agreed to end the tenancy and refund the balance or if Ms. Villarreal breached the contract.
17. I find on Ms. Nielsen's handwritten note and electronic messages in evidence that the parties did not mutually agreed to end the tenancy. I find Ms. Nielsen unilaterally ended the tenancy. I also find that Ms. Villarreal did not agree to refund any of the rent for the remaining days and did not breach the contract. My reasons follow.
18. The rented bungalow was a duplex. Ms. Villarreal lived in the adjoining side. Ms. Nielsen argues that Ms. Villarreal, as her neighbour, was aware of her comings and goings. She says Ms. Villareal failed to provide her with safe and quiet accommodation. She alleges that Ms. Villarreal "screamed at me and inferred that I was a liar". She also alleges Ms. Villarreal created a hostile environment by her "ongoing" complaints and "left me no option but to leave and remove myself from a tense, abusive and hostile environment". Ms. Villarreal denies Ms. Nielsen's allegations
19. Ms. Nielsen submitted statements from friends with their respective opinions on her character. I found these statements unhelpful in deciding this dispute. The friends do not say they witnessed the disputed interactions between Ms. Villarreal and Ms. Nielsen. So, I have put no weight on these witness statements.
20. To support her claims of "ongoing" complaints, Ms. Nielsen submitted a copy of the parties' electronic message conversations. The messages state that Ms. Villarreal had occasion to enter Ms. Nielsen's bungalow to do some caulking and painting. The messages refer to a few instances where Ms. Villarreal complained to Ms. Nielsen about her leaving lights and a fan on, her dog, and sand on the couch.
21. On my review of the electronic messages, I find Ms. Villarreal's tone was polite and respectful. I find Ms. Villarreal's request that Ms. Nielsen keep her dog off the couch

was reasonable and not impossible to achieve since Ms. Nielsen says her dog was unable to jump on the couch. I also find that Ms. Villarreal's messages included good reasons for asking Ms. Nielsen to turn the fan and lights off when she was away from the bungalow. I find she reasonably suggested Ms. Nielsen make a note to remind herself to turn them off. Ms. Villarreal stated that when the fan is left on it poses a risk of fire and it was not the single occurrence of it being left on. Ms. Villarreal stated that she was embarrassed for having to raise the concerns again. Ms. Nielsen admitted in her reply that she forgot again to turn off the fan and lights. To the extent that Ms. Villarreal's complaints about these items were "ongoing", I find on the evidence that they were justified. Overall, I find the concerns as raised by Ms. Villarreal in the messages were reasonable and her tone and the message contents were appropriate.

22. Ms. Nielsen asserts that Ms. Villarreal also prevented her from using a washing machine that was undisputedly part of the rental agreement. I find the evidence does not prove Ms. Nielsen was prevented from using the laundry machine. However, I accept Ms. Villarreal cautioned Ms. Nielsen about the laundry machine use. Ms. Nielsen admitted to using the laundry machine improperly and it is undisputed that the washing machine flooded. I find it reasonable in the circumstances that Ms. Villarreal would caution Ms. Nielsen on its use. I have not discussed each of Ms. Nielsen's other allegations, such as those about a butter-sharing incident, because I find the evidence subjective and the issues relatively trivial. I find no pattern of unjustified complaining.
23. I find it was an implied term of the rental agreement that the parties would treat each other with respect and not engage in behaviour that would make either party unsafe. I accept that the parties did not get along. However, I find Ms. Nielsen has not established on a balance of probabilities that Ms. Villarreal's conduct towards her was disrespectful or unsafe. I also find that Ms. Villarreal's expectations for Ms. Nielsen's conduct as a tenant were not outside what a reasonable person would expect for furnished vacation rental accommodation.

24. Ms. Nielsen carries the burden of proof on this claim. For the reasons above, I find she has not established that Ms. Villarreal breached the rental agreement. I find that Ms. Nielsen decided on her own free will to vacate the bungalow and Ms. Villarreal is not required to reimburse her rent. Absent a breach, I find Ms. Nielsen is also not entitled to her claimed expenses for alternative accommodation and flights home. I dismiss Ms. Nielsen's claims on these issues.
25. As mentioned, Ms. Nielsen seeks a refund of \$100 for a pet deposit that she paid Ms. Villarreal for her dog to stay with her. In their initial conversations, Ms. Villarreal told Ms. Nielsen she could bring her dog so long as it does not destroy doors or furniture. The parties do not say if they discussed other terms. On a plain reading of the word "deposit", I find the pet deposit was meant offset any pet related damage. In the absent of such damage, I find it was refundable.
26. Ms. Villarreal did not refund the pet deposit after Ms. Nielsen vacated the rental. She says that she kept the deposit because Ms. Nielsen's dog dirtied the couch, bedlinen, mattress, and yard and she incurred costs to clean-up after it. Ms. Nielsen denies these allegations. While she admits to leaving some sand on the couch during the tenancy, she denies that it stained or damaged the couch. Without explanation, Ms. Villarreal provided no photographs of the alleged damage or uncleanliness. She also provided no receipts showing she incurred any clean-up costs.
27. I find on Ms. Nielsen's photographs taken at move-out that the couch looked clean and not stained. The photographs show that the bedspread and the rest of the bungalow look clean as well. Ms. Nielsen provided a witness statement from a third party who states that he saw the bungalow just prior to move-out and noticed the couch and bungalow were clean. I prefer Ms. Nielsen's photographs and witness statements over Ms. Villarreal's unsupported assertions. I find it more likely than not that Ms. Nielsen left the bungalow clean and that her dog caused no damage. I find that Ms. Nielsen is entitled to reimbursement of the \$100 pet deposit.

28. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Nielsen is entitled to pre-judgment interest on the pet deposit from January 14, 2020, the date she vacated the bungalow, to the date of this decision. This equals 94 cents.
29. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Nielsen was mostly unsuccessful on her \$1,627 claim, I find only a partial reimbursement of the \$175 she paid in CRT fees is appropriate. I will allow Ms. Nielsen reimbursement of \$50 in CRT fees. Ms. Villarreal did not pay dispute-related expenses and neither party claimed dispute-related expenses.

ORDERS

30. Within 30 days of the date of this order, I order Ms. Villarreal to pay Ms. Nielsen a total of \$150.95, broken down as follows:
- a. \$100.00 as reimbursement for the pet deposit,
 - b. \$0.95 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$50.00 in CRT fees.
31. Ms. Nielsen's remaining claims are dismissed.
32. Ms. Nielsen is entitled to post-judgment interest, as applicable.
33. 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.

34. 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