Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-004171

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pearson v. Maronski*, 2020 BCCRT 1050

BETWEEN:

CORY PEARSON

APPLICANT

AND:

GERARD MARONSKI

RESPONDENT

AND:

CORY PEARSON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a commercial lease. The applicant and respondent by counterclaim, Cory Pearson, rented commercial space from the respondent and applicant by counterclaim, Gerard Maronski. Mr. Pearson says at the end of the lease's term, he vacated the property but that Mr. Maronski failed to return his $5,700 damage deposit. Mr. Pearson seeks a total of $5,000, as he agreed to abandon his claim over and above the Civil Resolution Tribunal's small claims $5,000 monetary limit.

2. Mr. Maronski says Mr. Pearson is not entitled to the damage deposit's return because it was applied to various damage he says Mr. Pearson caused during the tenancy. In addition, Mr. Maronski counterclaims for an additional $5,000, for the replacement of an HVAC system, patio repairs, and the installation of a T-bar ceiling.

3. Both parties are 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 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT'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 British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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.

7. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:

    a. Order a party to do or stop doing something;

    b. Order a party to pay money;

    c. Order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Is Mr. Pearson entitled to $5,000 as the return of his damage deposit?

    b. Is Mr. Maronski entitled to $5,000 as compensation for damage to his commercial rental property?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, as the applicant Mr. Pearson bears the burden of proof on a balance of probabilities. Mr. Maronski bears this same burden in his counterclaim. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

10. It is undisputed the parties entered into a 2-year commercial tenancy agreement for restaurant space commencing August 1, 2017 (the lease agreement). The parties agree there were previous rental agreements that preceded the August 1, 2017 lease, but those lease agreements are not before me. In any event, it is undisputed Mr. Pearson occupied the property since sometime in 2012.

11. The lease agreement provided that Mr. Pearson must pay a $5,700 security deposit. Additionally, the lease agreement required that Mr. Pearson keep the premises in a state of "reasonable order, repair and condition to the same extent as would a prudent and careful owner in occupation", subject to "normal or reasonable" wear and tear.

12. It is undisputed that Mr. Pearson did not renew his tenancy with Mr. Maronski at the end of the lease agreement. Mr. Pearson vacated the property on July 29, 2019. The parties say they did a walk-through of the premises on July 31, 2019, though no walk-through inspection or report was provided in evidence. Mr. Pearson says the walk-through was uneventful, and no issues were raised by Mr. Maronski. In contrast, Mr. Maronski says he noticed the HVAC system was not blowing cold air, but that he did not have sufficient time to test the system during the walk-through.

13. Later, on September 5, 2019, Mr. Maronski emailed Mr. Pearson and advised the HVAC system repairs were $4,567.50, and that it was going to cost an additional $1,890 to replace the property's outside patio railings. As the repairs totaled $6,457.50, more than Mr. Pearson's $5,700 damage deposit, Mr. Maronski offered to waive the remaining balance, and keep Mr. Pearson's damage deposit as compensation for the alleged damage. Mr. Pearson says Mr. Maronski contacted him again on September 7, 2019, alleging the T-bar ceiling needed to be re-installed as well, at additional cost.

14. Mr. Pearson says the repairs Mr. Maronski alleges are needed are not his responsibility, and so he should not have to pay for them and should get his damage deposit back. In contrast, Mr. Maronski says Mr. Pearson caused the damage, that the total repair costs significantly exceed the paid damage deposit,

and therefore Mr. Maronski seeks payment for the alleged damage which, as noted above, he seeks an additional $5,000 for, over and above the damage deposit already paid by Mr. Pearson.

15. I will deal first with the alleged damage.

HVAC system

16. As noted above, Mr. Maronski says the HVAC system was not operating properly when Mr. Pearson vacated the property, which Mr. Pearson denies. Mr. Maronski submitted a statement from a subsequent tenant, GD, who stated that when they took possession of the property on August 1, 2019, the HVAC system would blow air, but the heating and cooling were not working.

17. Mr. Maronski submitted 4 quotes for HVAC system replacement, ranging from $8,250 plus GST to $19,995 plus GST, all dated mid to late September 2019. The quotes noted the rooftop air condenser required replacement, and two noted the indoor unit needed some upgrades as well. Mr. Maronski says he went with the lowest quote, and paid a total of $8,662.50 for the repairs. Notably, Mr. Maronski does not address the discrepancy between the amount he claims he ultimately paid ($8,662.50) and the amount he told Mr. Pearson he paid in his September 5, 2019 email ($4,567.50). Mr. Maronski vaguely asserts that the repairs were more extensive than initially thought, but the September 5, 2019 email already addresses an increase in price, as he told Mr. Pearson in that email that the initial repair quote was $3,985 plus GST, but that “the actual cost” was $4,567.50. Mr. Maronski did not provide any documentation related to these prior quotes or alleged repairs.

18. In any event, I find Mr. Maronski is not entitled to reimbursement for the HVAC repairs, because I find Mr. Maronski has not proven Mr. Pearson caused any damage to the HVAC system requiring repair. The parties agree that the HVAC system is maintained by a strata corporation, and both parties submitted maintenance records. The records indicate the HVAC system was inspected 8

times during the term of the lease agreement, and again on August 9, 2019, just over one week after Mr. Pearson vacated the property.

19. In the August 9, 2019 service order, the HVAC technician noted they, among other things, inspected the airhandlers cooling operation, the outdoor condenser unit operation, and the compressor operation. Each of these inspections was noted as "ok". I also note the 8 inspections prior to the August 9, 2019 inspection do not note any work other than preventative maintenance, but that the April 30, 2019 and August 9, 2019 visits note "high fan amps".

20. Mr. Pearson says the HVAC unit was approximately 12-15 years old, and the issues Mr. Maronski claims for are likely from regular wear and tear. Based on the HVAC tech service records, I find Mr. Maronski has not proven the property's HVAC unit needed replacement, or that Mr. Pearson caused any damage to the HVAC unit. Although GD stated the HVAC system was not working upon their possession of the property on August 1, 2019, I prefer the evidence of the HVAC technician who fully inspected the system on August 9, 2019 and found no issues with the subsequently replaced parts. Therefore, I find Mr. Maronski is not entitled to reimbursement for the HVAC repair or replacement.

Patio railing

21. Mr. Maronski says Mr. Pearson left the property's outside patio railings in disrepair. He submits the cost to replace the railing is $1,800, plus $180 to remove the existing railing. Mr. Pearson says the patio railings are in good condition, but that there was some wear on the railings such that they require a new coat of paint.

22. The pictures in evidence show some chips in the paint, which I agree is likely from reasonable wear and tear. However, the photographs also show 5 missing balusters/pickets. I find the missing balusters are not a result of reasonable wear and tear, and need to be replaced. Mr. Maronski seeks compensation for the full removal and replacement of entire railing system, but does not explain why the

missing balusters could not reasonably be replaced at a lower cost. On a judgment basis, I find Mr. Maronski is entitled to $500 to replace the 5 missing balusters.

T-bar ceiling

23. Mr. Maronski says the property's T-bar ceiling was removed and needs to be replaced. He provided his estimate for this work totaling $7,665 plus GST. Mr. Pearson says the T-bar ceiling was removed by a prior tenant in 2012, and that he is therefore not responsible to replace it. Mr. Maronski does not dispute that a prior tenant removed the ceiling, but says that as Mr. Pearson took over that tenant's lease, he is responsible to replace what that tenant removed.

24. As noted above, the lease agreement before me is from August 1, 2017 to July 31, 2019. The lease agreement states that any fixtures removed by the tenant must be replaced. However, it is undisputed Mr. Pearson did not remove the T-bar ceiling. Although Mr. Maronski says Mr. Pearson took over the prior tenant's 2012 lease obligations, he did not provide that prior lease agreement or any documentation in support of that assertion. I find Mr. Maronski has not met his burden of proving Mr. Pearson is responsible for replacing the T-bar ceiling.

25. In summary, I find Mr. Maronski is entitled to reduce Mr. Pearson's damage deposit by a total of $500 for proven damage to the commercial property. As Mr. Pearson paid $5,700 for the damage deposit, this means he would be entitled to a total refund of $5,200. However, as noted above, Mr. Pearson has abandoned his claim above $5,000 to fall within the CRT's small claims monetary limit. I find Mr. Pearson is entitled to the full $5,000 as claimed, and Mr. Maronski's counterclaim is dismissed.

26. Mr. Pearson is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act*. Calculated from August 1, 2019, the day after the lease agreement ended, this amounts to $94.34.

27. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Mr. Pearson was successful, I find that he is entitled to reimbursement of the $175 he paid in tribunal fees. As Mr. Maronski

was not successful, his claim for tribunal fees is dismissed. Neither party claimed dispute-related expenses.

ORDERS

28. Within 30 days of the date of this decision, I order the respondent, Gerard Maronski, to pay the applicant, Cory Pearson, a total of $5,269.34, broken down as follows:

    a. $5,000 for return of his damage deposit,

    b. $94.34 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $175 in tribunal fees.

29. Mr. Pearson is also entitled to post-judgment interest, as applicable.

30. Mr. Maronski's counterclaim is 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

Andrea Ritchie, Vice Chair