Civil Resolution Tribunal

Date Issued: September 22, 2020

File: SC-2020-002880

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rose v. All Season Mountain Holidays Inc.,* 2020 BCCRT 1071

B E T W E E N :

KIRA ROSE

APPLICANT

A N D :

ALL SEASON MOUNTAIN HOLIDAYS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about the return of a $2,500 damage deposit the applicant Kira Rose paid the respondent, All Season Mountain Holidays Inc. (ASMH), for a 5-month

vacation rental in Whistler, BC. Ms. Rose claims a total of $5,000, on the basis that she is entitled to double the damage deposit given ASMH's failure to return it.

2. ASMH says Ms. Rose left the property dirty and owed certain utility charges under the rental contract. ASMH says it deducted the cleaning expenses and unpaid bills from the damage deposit, and says it only owes Ms. Rose $483.67.

3. The applicant is self-represented. ASMH is represented by an employee, MG.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

8. Ms. Rose refers to a rule in British Columbia that requires a landlord to repay double a damage deposit if the landlord fails to return the deposit on time. I infer Ms. Rose refers to section 38(6)(b) of the *Residential Tenancy Act* (RTA), which says a landlord must pay a tenant double the deposit's amount if they landlord fails to return a deposit within a specified timeframe. However, the CRT does not have jurisdiction to grant statutory entitlements available under the RTA, as that is within the exclusive jurisdiction of the Residential Tenancy Branch (RTB). Section 4(e) of the RTA says that the RTA does not apply to vacation accommodation. I note that on January 23, 2019 the RTB declined jurisdiction over Ms. Rose's dispute. I find the CRT has jurisdiction over this dispute as it falls under debt or damages as set out in section 118 of the CRTA. I will address Ms. Rose's contractual entitlement to double the damage deposit below.

ISSUE

9. The issue in this dispute is to what extent Ms. Rose is entitled to the return of her damage deposit or double its value.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, as the applicant Ms. Rose bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

11. Both parties agree at least some amount of the $2,500 deposit should be returned. Based on the evidence before me, Ms. Rose admittedly did not fully clean the property when she left. Ms. Rose does not particularly dispute the contract required her to pay utility charges. However, Ms. Rose argues that leaving the property unclean is not grounds to withhold any of the deposit under the contract. Ms. Rose also argues that due to ASMH's delay in returning the deposit ASMH should have to pay her double the damage deposit, namely $5,000.

12. Ms. Rose rented ASMH's vacation property, for the period between January 1, 2018 and June 1, 2018. When Ms. Rose signed the contract on September 28, 2017, she paid a $2,500 damage deposit plus $10,000 for first and last months' rent. None of this is disputed.

13. The parties' September 18, 2017 rental contract contains the following relevant terms:

    a. Ms. Rose was responsible for all missing inventory, telephone charges and damage to the property regardless of cause. Further, "cash damage deposits will be held for 2 weeks at which time a refund cheque will be issued for funds owing."

    b. Ms. Rose was responsible for paying gas and hydro utility charges during her rental.

    c. All linens must be laundered regularly and returned in good condition. If not, their replacement cost will be deducted from the damage deposit.

    d. Ms. Rose would leave the property in "clean and orderly condition" when she departed, including but not limited to "full cleaning of carpets, touch up painting and full linen laundering at a commercial facility" at Ms. Rose's expense.

    e. Any agreements not reduced to writing are not enforceable.

14. First, there is nothing in the contract about penalties payable if either party fails to comply with it. As noted above, the RTA does not apply to this dispute. So, I find there is no basis for "double" the damage deposit's return as claimed. Below I address to what extent Ms. Rose is entitled to return of the $2,500 damage deposit.

15. Next, I find that ASMH is entitled to payment for reasonable proven cleaning costs, even if the contract did not expressly say the deposit could be withheld to cover cleaning costs. I say this because the contract clearly says Ms. Rose was required to leave the property in clean and orderly condition.

16. Further, Ms. Rose emphasizes the contract says the deposit would be refunded based on “funds owing”, within 2 weeks of the tenancy’s end. It is true that did not happen here. However, I find nothing turns on this because, as noted, the contract does not address penalties for a party’s failure to comply. I find ASMH’s delay, even if I accept it knew where to send Ms. Rose her reimbursement, is best addressed by pre-judgment interest addressed below.

17. ASMH’s August 13, 2018 “End of Lease Statement” (statement) shows it owes Ms. Rose a $483.67 refund from the deposit, which as referenced above ASMH has not paid to date. The statement charged Ms. Rose:

    a. $1,212.49 in BC Hydro charges from Jan 6 to June 1, 2018, $1,013.26 of which is supported by BC Hydro bills in evidence (I pro-rated the $160.77 bill for the May 23 to July 20 period, to $24.93 for the relevant May 23 to June 1 tenancy),

    b. $84.52 in Fortis Gas charges for May and April 2018, which is supported by Fortis Gas bills in evidence,

    c. $150 for a “Gas Estimate” for January, February, and March 2018,

    d. $294 for “final clean” by Wonderful BC Cleaning, and

    e. $275.62 for additional cleaning by a cleaner employed by ASMH or its agent.

18. ASMH has not provided a reasonable explanation for the absence of utility invoices. I am not prepared to accept Mr. Rose owes utilities based on MG’s estimate. ASMH created the contract that held a tenant responsible for utility bills and I find as such ASMH is responsible to prove the amount owing. So, I find Ms. Rose is only responsible to pay $1,013.26 for BC Hydro and $84.52 for Fortis Gas, for a combined total of $1,097.78 for utilities.

19. I turn then to the cleaning charges, which as summarized above, ASMH calculates as totaling $569.62.

20. Ms. Rose says that when she signed the contract and paid the deposit, ASMH's agent did not complete an in-person walkthrough upon her group's arrival or at the time of their departure. I accept this evidence as it is not disputed.

21. As set out in MG's June 6, 2018 email to Ms. Rose, ASMH says the cleaning took a lot longer than they expected. MG said the sofa bed was "pretty bad" and was "quite filthy" underneath, and so they vacuumed it all and put on new sheets. MG said only one bed was made and they remade it with "hospital corners" and made the other beds. MG said all the beds had "stuff underneath" that they had to vacuum, and the kitchen chairs were "quite covered in spills and dried on food" that took a "fair bit of time" to clean. MG did not quantify the cleaning costs in this email.

22. I accept MG's description of the property as set out in the June 2018 email, largely because Ms. Rose did not dispute its accuracy.

23. After an exchange of emails in July 2018, on October 17, 2018, Ms. Rose emailed MG that when she moved out, she had tried to advise the cleaners about "what was already done and what still needed to be cleaned", and that the cleaner said it did not matter what Ms. Rose had already done as she would re-do it all anyway. Ms. Rose wrote that this was not what she and MG had agreed upon. I accept this undisputed evidence, noting that ASMH did not produce a statement from anyone who cleaned the property after Ms. Rose left. Ms. Rose wrote that the cleaners should have focused their efforts on the areas Ms. Rose had "left undone", and had they done so they would have finished the job themselves within 8 hours of billable time and no additional cleaning time would have been necessary. I agree with Ms. Rose that the parties' contract did not allow for re-billing Ms. Rose for cleaning work that she had already reasonably completed.

24. Based on Ms. Rose's emails in evidence with MG, Ms. Rose admittedly did not complete the cleaning as required. I find this means the $294 invoice is likely reasonable, as it billed for 8 hours of "deep cleaning service" on June 1, 2018. I find Ms. Rose is responsible for this $294 bill.

25. What about the extra cleaning for $275.62? ASMH submitted historical cleaning bills for the property, which I place little weight on because they are not relevant to the property's condition when Ms. Rose left, after a 5-month residency.

26. The only other receipt in evidence is a handwritten "phone memo" that says 4 hours for June 2 and 3.5 hours for June 3. There is no rate and no dollar figure at all. There is also no name and no explanation of the work done. Further, given my conclusions above that ASMH likely re-did work completed by Ms. Rose, I find that 8 hours of billable time was sufficient cleaning time. So, I find ASMH is not entitled to the $275.62 for additional cleaning.

27. I find Ms. Rose owes $1,097.78 for utilities and $294 for 8 hours of cleaning, which totals $1,391.78. This leaves $1,108.22 owing to Ms. Rose from the $2,500 deposit.

28. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Rose is entitled to pre-judgment interest under the COIA on the $1,108.22, from June 30, 2018 to the date of this decision. I find June 30 is a reasonable date for Ms. Rose to have received the deposit balance back. This interest equals $41.67.

29. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. As Ms. Rose was partially successful, I find she is entitled to reimbursement of half her paid $175 in CRT fees, or $87.50. I dismiss Ms. Rose's $10.70 claim for mailing costs, as she does not explain why this was necessary and there is no receipt. As ASMH was unsuccessful, I decline to grant the $350 claim for time spent dealing with the dispute. I would have not allowed that in any event, under the CRT's rules that say the CRT does not ordinarily compensate for time spent.

ORDERS

30. Within 21 days of this order, I order ASMH to pay Ms. Rose a total of $1,237.39, broken down as follows:

    a. $1,108.22 in debt,

b. $41.67 in pre-judgment COIA interest, and

c. $87.50 in CRT fees.

31. Ms. Rose is entitled to post-judgment interest as applicable. Ms. Rose's and ASMH's respective claims for dispute-related expenses are dismissed.

32. 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.

33. 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.

Shelley Lopez, Vice Chair