



Civil Resolution Tribunal

Date Issued: December 2, 2020

File: SC-2020-005100

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Naves v. Kalawarny*, 2020 BCCRT 1366

BETWEEN:

FRANKLIN NAVES

APPLICANT

AND:

DARREN KALAWARNY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a vacation rental damage deposit.
2. The applicant, Franklin Naves, rented a vacation home from the respondent, Darren Kalawarny. Mr. Naves paid a \$1,000 damage deposit, which he wants returned.

3. Mr. Kalawarny says he kept the damage deposit because Mr. Naves's group breached the rules, disturbed neighbouring guests, and required extensive cleaning after their stay.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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 in the interests of justice.
7. Section 42 of the CRTA says 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 to what extent, if any, Mr. Kalawarny must refund Mr. Naves's \$1,000 damage deposit.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Mr. Naves must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. Mr. Kalawarny provided evidence but no submissions despite CRT staff providing him with opportunities to do so.
11. There is no written contract in evidence. Mr. Naves submitted an email from Mr. Kalawarny confirming the 3-night stay with 12 guests. On top of the \$4,200 booking rate there was a \$400 cleaning fee and a \$1,000 damage deposit.
12. In his detailed Dispute Response, Mr. Kalawarny said the vacation rental normally includes a shared back yard and hot tub, but due to the COVID-19 pandemic he reserved the back yard and hot tub for guests staying in a separate suite at the back of the house ("suite guests"). He said the main house guests, Mr. Naves's group, were restricted to the front patio. He said he called Mr. Naves a week and a half before check-in to explain.
13. In contrast, Mr. Naves says upon his arrival, Mr. Kalawarny informed him that Mr. Naves's group could not use the back yard and hot tub because he had overbooked. Mr. Naves says this was contrary to his expectation, based on Mr. Kalawarny's website, which describes private access to the entire property. Based on the website, which Mr. Kalawarny does not say has changed, I agree that it says bookings would have private access to the entire property.
14. Mr. Kalawarny said at check-in he paid Mr. Naves \$300 cash as compensation for the inconvenience of not being able to use the back yard and hot tub. He said Mr. Naves agreed that the back yard and hot tub were completely off-limits.

15. Mr. Naves does not explicitly deny receiving \$300 cash or agreeing not to use the back yard and hot tub. He says Mr. Kalawarny said he would consider a fee reduction, but never got back to Mr. Naves. I find it more likely than not that Mr. Naves accepted the \$300 cash and agreed that his group would not use the back yard and hot tub. Thus, I find the parties mutually agreed to modify their contract and Mr. Naves no longer had private access to the entire property as originally booked.
16. Mr. Kalawarny also said he asked Mr. Naves to respect quiet hours from 11 p.m. to 8 a.m., and to have a maximum of 4 vehicles in the parking area, leaving 2 spots for the suite guests. Mr. Kalawarny said he left a copy of the house rules with Mr. Naves, but there are no written rules in the evidence.
17. Mr. Naves's group checked in on Thursday, June 25, 2020. Mr. Kalawarny said when he checked in the suite guests on Friday, it was clear that Mr. Naves' group had used the hot tub as there were cigarette butts and empty bottles around. He said he firmly reminded Mr. Naves that this was unacceptable.
18. Mr. Kalawarny said the suite guests called him several times with complaints about Mr. Naves's group. He said on Friday they were kept up until 5 am with loud music and partying, and on Saturday again found the hot tub area strewn with empty bottles, cigarette butts, dirty dishes and clothing. They were also unable to park because Mr. Naves's group was using all 6 parking spots. Text messages confirm the suite guests' complaints about Mr. Naves's group. They also show that the suite guests accepted Mr. Kalawarny's offer to reimburse them for one night's stay, or \$210.
19. When Mr. Naves asked for his deposit back, Mr. Kalawarny texted an explanation of why he was keeping the damage deposit, which I summarize as follows:
 - a. \$300 as reimbursement of the refund Mr. Kalawarny gave Mr. Naves for the inconvenience of not being given use of the back yard and hot tub.
 - b. \$210 to reimburse Mr. Kalawarny for giving the suite guests a partial refund for their complaints.

- c. \$300 for carpet cleaning for stains on stairs and bedrooms.
 - d. \$100 additional cleaning fee for the back yard and hot tub.
 - e. \$100 additional laundry fee for stained towels and sheets.
20. There is no evidence that the parties' contract gave Mr. Kalawarny explicit authority to retain portions of the damage deposit for rule breaches. Although not specifically argued, I find Mr. Kalawarny seeks an "equitable set-off". This means if he can prove Mr. Naves owes him money that is reasonably connected to the deposit debt, he can deduct it from the amount he owes Mr. Naves (see *Wilson v Fotsch*, 2010 BCCA 226).
21. Mr. Kalawarny's stated reason for keeping the \$300 and \$210 reimbursements is essentially that Mr. Naves breached his agreement not to use the back yard and hot tub, and to respect quiet hours. I found above that the parties mutually agreed to modify the contract such that Mr. Naves would not use the back yard and hot tub in exchange for \$300. Mr. Naves does not dispute that his group used the hot tub and back yard and partied into the early morning hours. I find that Mr. Naves treated the rental as if his group had private access to the entire property as originally agreed. I therefore find that Mr. Naves breached the modified agreement and owes Mr. Kalawarny \$300. I further find that this money is reasonably connected to the deposit debt, as they both arose under the same contract. I find Mr. Kalawarny is entitled to set off \$300 from the damage deposit debt.
22. As for the \$210 reimbursement to the suite guests, the question is whether it was reasonably foreseeable as damages flowing from Mr. Naves's breach of contract (see *Canson Enterprises Ltd. v. Boughton & Co.*, 1991 CanLII 52 (SCC)).
23. The CRT has awarded deductions from a vacation rental damage deposit as a result of "excessive noise" (*Davison v. Wikjord*, 2020 BCCRT 1097). However, in *Davison*, there were written terms and conditions permitting deductions from the damage deposit for excessive noise. Here, there are no such terms or conditions. Mr. Kalawarny has not explained why it was reasonably foreseeable to Mr. Naves that he

would be responsible for suite guest refunds. I find it was not in Mr. Naves's original contemplation when he booked the property under the assurance he would have private access to the entire property. I further find it would not be reasonable to infer that simply by accepting \$300 as compensation for Mr. Kalawarny's overbooking error, Mr. Naves reasonably ought to have contemplated being liable for any refunds Mr. Kalawarny might give to other guests.

24. Moreover, Mr. Kalawarny has not explained why refunding 50% of the suite guests' fees was a reasonable amount to mitigate damages, or what those damages might have been. I find Mr. Kalawarny is not entitled to set off \$210 from the damage deposit debt.
25. As for the carpet and sheet stains, Mr. Kalawarny did not submit any photographs to show the alleged damage. He also did not provide evidence to support the amounts claimed, such as receipts for carpet cleaning or laundry supplies. I find these alleged damages unproved.
26. Mr. Kalawarny submitted some photos of either a wood table or wood flooring that show some scuffs or scratches, but I cannot determine the size of the scratches. In any event, Mr. Kalawarny did not claim to be retaining anything for damage to wood surfaces.
27. As for the \$100 in additional cleaning fees for the back yard and hot tub, the amount claimed is not supported by any evidence, such as cleaning invoices, or a statement from the respondent saying how long it took to clean the areas. I note the booking included a \$400 cleaning charge, and there is no evidence that the actual cleaning costs exceeded this amount. I find these alleged damages unproved.
28. In conclusion, I order Mr. Kalawarny to refund the \$1,000 damage deposit, less the \$300 for breach of contract. This amounts to \$700.
29. The *Court Order Interest Act* applies to the CRT. Mr. Naves is entitled to pre-judgment interest on the \$700 from June 29, 2020, the last day of the booking, to the date of this decision. This equals \$1.41.

30. 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 Mr. Naves was substantially successful and is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

31. Within 14 days of the date of this order, I order Mr. Kalawarny to pay Mr. Naves a total of \$826.41, broken down as follows:

- a. \$700.00 in debt for the deposit,
- b. \$1.41 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 in CRT fees.

32. Mr. Naves 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 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.

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.

Micah Carmody, Tribunal Member