



Civil Resolution Tribunal

Date Issued: December 22, 2020

File: SC-2020-003960

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cedar Beach Rails Property Inc. v. Titan*, 2020 BCCRT 1450

B E T W E E N :

CEDAR BEACH RAILS PROPERTY INC.

APPLICANT

A N D :

THOMAS TITAN and VIRGINIA TITAN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about unpaid rent and hydro. The applicant, Cedar Beach Rails Property Inc. (Cedar), says that the respondents, Thomas Titan and Virginia Titan, owe monthly rent and hydro fees after staying in its RV park. It seeks \$1,307.12.

2. Mr. Titan says he attempted to pay in March 2020 before he left but Cedar was not able to “process the payment”. He says the debt was satisfied by the failed payment attempt. Ms. Titan did not file a response, which is discussed in further detail below.
3. Cedar is represented by an employee. Mr. Titan is 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). 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.
5. 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.
6. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Mr. Titan or Ms. Titan owe any money to Cedar for unpaid rent and hydro, and if so, what amount.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this the applicant Cedar must prove its case on a balance of probabilities. I have reviewed all the evidence and arguments but only refer to them to the extent necessary to explain and give context to my decision.
10. Cedar says that the respondents rented a site in its RV resort on a monthly basis from November 2019 until March 31, 2020 and were responsible for paying \$695 for the monthly rent plus monthly metered hydro costs. It says when the respondents vacated the site on March 30, 2020, they owed a total of \$1,001.31 for the March 2020 rent plus \$305.81 for the February 2020 and March 2020 hydro costs.
11. Cedar says the parties had an agreement that the respondents would pay the monthly rent and hydro costs while he stayed at its RV park. Cedar says that Mr. Titan acknowledged this agreement since he paid monthly rent and hydro costs from November 2019 until February 2020.
12. Cedar also says the respondents are required to pay the “prescribed” rate under the *Hotel Keepers Act* (HKA). The HKA applies to a guest, boarder, or lodger who is at least 3 months in arrears for unpaid food or accommodation. It allows an innkeeper, boarding house keeper and lodging house keeper to sell the guest’s baggage and property to satisfy the debt. Since Cedar is not seeking such a remedy, I find the HKA does not apply.
13. I will first address Cedar’s claims against Ms. Titan. As noted above, Ms. Titan did not file a Dispute Response despite being properly served. This means she is in default. Where a respondent is in default, liability is assumed. This means that because Ms. Titan refused to participate, it is generally reasonable to assume that

Cedar's position is correct about the issue at hand. So, I find Ms. Titan is liable for the unpaid rent and hydro costs.

14. Mr. Titan provided a Dispute Response but no evidence or submissions despite being given the opportunity to do so. Cedar submitted emails it exchanged with Mr. Titan in May 2020 when it asked Mr. Titan for payment. In the emails, Mr. Titan stated the following:

- a. He was not paying any bills due to the COVID-19 pandemic,
- b. He tried to pay the bill during the first week of March, 2020 but Cedar was not able to process the payment. He did not state the amount of the payment he tried to make. However, since the hydro amount is calculated at the end of the month, I infer that Mr. Titan meant that he tried to pay for the March 2020 rent and hydro for February 2020, which totaled \$846.75,
- c. He paid his bills in full when he left. Mr. Titan did not provide any proof of payment,
- d. The "time for this bill has come and gone". Mr. Titan did not explain what he meant by this. However, I note that the limitation period has not expired since it is 2 years for a debt (see section 6 of the *Limitation Act*), and
- e. He did not agree to be billed by Cedar. Mr. Titan did not explain what this meant.

15. The province declared a state of emergency on March 18, 2020 due to the COVID-19 pandemic and made several orders about residential tenancies. However, I find none of these orders apply to Mr. Titan since he voluntarily vacated Cedar's resort. I also find that since Mr. Titan did not explain why he was not paying bills due to the COVID-19 pandemic, it did not affect his obligation to pay this debt.

16. Did Mr. Titan's attempt to pay in March 2020 satisfy the amount owed to Cedar? The *Canadian Law Dictionary* defines payment as "the transfer of money from one person to another with the assent of both parties" (see *Toronto-Dominion Bank v. Spiller*,

1982 CanLII 268 (BCSC), at paragraph 5). Since Mr. Titan admits that funds did not transfer to Cedar when he attempted to pay in early March 2020. I find that Mr. Titan did not pay Cedar and the debt is not satisfied until the funds are actually received.

17. I award Cedar \$1,307.12 for unpaid rent and hydro costs. I find Mr. Titan and Ms. Titan must pay Cedar \$1,307.12. I find they are joint and severally liable for this amount. This means that Cedar can collect the award ordered below from either Mr. Titan or Ms. Titan.

CRT FEES, INTEREST, AND DISPUTE-RELATED EXPENSES

18. Cedar seeks either 2% monthly interest on the debt, or interest under the *Court Order Interest Act* (COIA), whichever is applicable. I find there is no evidence that the parties agreed to a 2% interest rate and so Cedar is only entitled to interest under the COIA.
19. The COIA applies to the CRT. Cedar is entitled to pre-judgment interest on the \$1,307.12 debt from March 30, 2020, the date it first requested payment, to the date of this decision. This equals \$9.29.
20. Cedar seeks \$300 for time spent on this dispute. CRT rule 9.5(5) says that the CRT will not order a party to pay compensation for the time spent dealing with a CRT dispute except in extraordinary circumstances. I find that there are no extraordinary circumstances in this dispute, so I dismiss this claim.
21. 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 Cedar is entitled to reimbursement of \$125 in CRT fees. Cedar did not claim dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order Mr. Titan and Ms. Titan to pay Cedar a total of \$1,441.41, broken down as follows:

- a. \$1,307.12 in debt,
- b. \$9.29 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

23. Cedar is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.
26. Since Ms. Titan is in default, she has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

Rama Sood, Tribunal Member