



Civil Resolution Tribunal

Date Issued: February 26, 2021

File: SC-2020-006285

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hollander v. Sedlic*, 2021 BCCRT 231

B E T W E E N :

JOHN HOLLANDER and DEBORAH HOLLANDER

APPLICANTS

A N D :

LISA SEDLIC and RON SEDLIC

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a refund for vacation rental fees. The applicants, John Hollander and Deborah Hollander, rented a condominium from the respondents, Lisa Sedlic and

Ron Sedlic. The Hollanders rented the condominium for their planned vacation in Hawaii.

2. The Hollanders cancelled their stay due to the global pandemic caused by COVID-19. The Sedlics refunded half of the rental fees that were paid in advance. The Hollanders seek a refund for the remaining \$1,700. They say the parties' contract was frustrated.
3. The Sedlics deny the claims. They say the doctrine of frustration is inapplicable because there is a force majeure clause in the contract, which is a clause that addresses events beyond the control of the parties. They say the contract terms apply and the fees paid are non-refundable.
4. Mr. Hollander represents the Hollanders. Ms. Sedlic represents the Sedlics.
5. As discussed below, I find the parties' contract does not have an applicable force majeure clause. However, I find the contract was not frustrated and the contract terms apply. I conclude the Sedlics are entitled to keep the rental fees paid and dismiss the Hollanders' claims. My reasons follow.

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). 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.
7. 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.

8. 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.
9. 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

10. The issue in this dispute is whether the parties' contract was frustrated, and if not, to what extent if any the Hollanders are entitled to the claimed refund.

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, as the applicants the Hollanders must prove their claims on a balance of probabilities. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. The following facts are undisputed. In late October 2019, the Sedlics rented their condominium in Hawaii to the Hollanders. The Hollanders booked April 15 to 24, 2020 for their stay. The Hollanders' son, TH, is the only named renter that signed the contract.
13. I considered finding that TH is the correct applicant and the Hollanders have no standing in this dispute. However, the Sedlics say the Hollanders paid the rental fee and not TH. The parties' emails show that before signing the agreement, the Sedlics communicated with Ms. Hollander and not TH. The Sedlics sent the Hollanders a copy of the agreement. The Sedlics also do not dispute the Hollanders' standing.

Given the parties' actions and their submissions, I find that TH merely signed on the Hollanders' behalf and the parties entered into the written contract in evidence.

14. Under the contract, the Hollanders paid a total of \$2,438.29 USD divided into 2 equal payments, made in October 2019 and February 2020. The contract referred to the sum total as a "deposit".
15. The contract had a cancellation term. It says that if the Hollanders cancelled their reservation within a cancellation window, the Sedlics would refund the money paid. The window is 60 or more days before the check-in date of April 15, 2020.
16. On March 13, 2020, the Government of Canada advised Canadians to avoid non-essential travel outside of Canada until further notice. The Government of Canada issued the advisory due to the global pandemic caused by COVID-19.
17. On March 14, 2020, Ms. Hollander emailed Ms. Sedlic to cancel their April 2020 booking. I note that this request was made outside the cancellation window. Ms. Hollander asked for a refund.
18. Ms. Sedlic replied that same day and offered 3 options. She said she could 1) provide a 50% refund of rental fees paid, 2) try to rent the condominium for the April 2020 booking dates and refund whatever was collected, or 3) apply the rental fee to another date up to April 2021. She warned that for option 3, rates might be higher from December 15 to April 15, 2021.
19. On March 28, 2020, Ms. Sedlic refunded half the rental fees paid of \$1,219.14 USD. The emails show Ms. Sedlic sent the refund after the Hollanders proposed taking a 50% refund and a 50% discount on a future stay. The parties do not say that they ever entered into a binding settlement agreement.
20. The Hollanders now claim for the remaining deposit amount, which they say is equivalent to \$1,700 CDN. It is undisputed that this is an appropriate conversion of the outstanding balance.

Is there an applicable force majeure clause, and if not, was the contract frustrated?

21. As noted above, the Hollanders rely on the doctrine of frustration. In *Interfor v. MacKenzie Sawmill Ltd.*, 2020 BCSC 416 at paragraph 43, the court said that a contract is frustrated by an event not reasonably contemplated by the parties on entering into the contract, that renders performance impossible or impracticable. The court also noted that a contract cannot be frustrated by an event that is the subject of a “force majeure” clause. In general, such a clause outlines what happens in certain circumstances that are beyond the parties’ control.
22. The first question is whether the circumstances before me are governed by an applicable force majeure clause. The Sedlics rely on a contract term that says no refunds will be given for tropical storm or hurricane warnings. The term goes on to state the cancellation policy and cancellation window, discussed earlier.
23. I find it clear that the Hollanders’ cancellation was caused by COVID-19 and the resulting travel advisory. The force majeure clause does not apply as it covers storms and hurricanes. I do not find the wording about refunds to be part of a force majeure clause. It is a general refund policy.
24. Given my conclusions, I find that the doctrine of frustration may still apply. I next consider whether COVID-19 and the travel advisory rendered performance of the contract impossible or impracticable.
25. The Hollanders provided printouts of materials about the advisory from the Government of Canada. They “strongly urged” Canadians to avoid non-essential travel outside of the country. The advisory was not an order or a legal ban on such travel. There is no evidence that Hawaii refused to receive travelers during the booked dates. I conclude that the parties could still perform the contract, through it might have been unwise or inadvisable to do so.

26. I also note that the Sedlics offered to apply the rental fee to another date up to April 2021, inclusive. Ms. Sedlic warned that rates would be higher during the busy season of mid-December to mid-April 2021, but I do not find this was enough to make the contract impossible or impracticable to perform. I find that the parties' contract could have still been performed on a future date as well.

Is any remedy appropriate?

27. As I have found the contract was not frustrated, the contract terms apply. The refund term, discussed above, says all money will be refunded if the cancellation request is made within the cancellation window.

28. The Sedlics say that under the contract no refunds are provided for cancellation requests outside the cancellation window. The contract does not explicitly state that the deposit or any other money paid is forfeited for late cancellation requests. However, I am satisfied that, when read in context, the contract provides that the deposit is not refundable for late cancellation requests. I note that the Hollanders do not dispute this interpretation in their submissions.

29. As stated above, Ms. Hollander cancelled her booking in March 2020, outside the cancellation window. I find the Sedlics are entitled to keep the deposit under the contract.

30. The Hollanders submit that around this time, airlines and other rental property owners provided the Hollanders full refunds for their services. While I accept that this happened, I do not find it relevant to interpreting the parties' specific contract.

31. For these reasons, I dismiss Hollanders' claims.

32. 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. The Sedlics did not pay any CRT fees or claim any dispute-related expenses, so I order none.

ORDERS

33. I dismiss the Hollanders' claims and this dispute.

David Jiang, Tribunal Member