Civil Resolution Tribunal

Date Issued: March 2, 2021

File: SC-2020-007886

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ponsford v. Ryder Truck Rental Canada Ltd.,* 2021 BCCRT 241

B E T W E E N :

BRYAN PONSFORD

APPLICANT

A N D :

RYDER TRUCK RENTAL CANADA LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a proposed residential tenancy agreement that was not completed. The applicant, Bryan Ponsford, says CL, an employee of the respondent, Ryder Truck Rental Canada Ltd. (Ryder), failed to honour his commitment to sign a lease and rent Mr. Ponsford's property by October 15, 2018 and instead backed out of the agreement on September 19, 2018. Mr. Ponsford claims $2,750 in lost rental

income, arguing Ryder as CL's employer should be held vicariously liable for CL's alleged breach.

2. Ryder says Mr. Ponsford's claims are out of time and that in any event Mr. Ponsford has no claim against it as CL's employer, since CL's application for tenancy was not within his employment's scope. CL is not a party to this dispute.

3. Mr. Ponsford is self-represented. Ryder is represented by its general counsel.

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 able to assess and weigh the documentary evidence and submissions before me.

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.

8. While this dispute is over a residential tenancy agreement, I find the CRT has jurisdiction under section 118 of the CRTA which covers debt and damages. I say this because the Residential Tenancy Branch does not have jurisdiction as the parties are not the landlord and tenant CL. Rather, Mr. Ponsford seeks to hold Ryder vicariously liable for CL's failure to finalize the tenancy agreement. So, Mr. Ponsford's claim is not something covered under the *Residential Tenancy Act*, and instead I find it is either a claim in contract or negligence, as discussed below.

ISSUES

9. The issues in this dispute are:

    a. Whether Mr. Ponsford's claims are out of time, and

    b. If not, whether Ryder is responsible for its employee CL's decision not to rent Mr. Ponsford's property, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Ponsford must prove his claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision. While Ryder provided lengthy submissions, I note it submitted no evidence despite having the opportunity to do so.

11. The underlying facts are not disputed. Ryder employed CL, who as noted above is not a party to this dispute. In September 2018, Mr. Ponsford advertised his rental property for an October 2018 vacancy. CL viewed the property in early September and Mr. Ponsford and CL exchanged messages about CL renting it.

12. On an "Application for Tenancy" (Application) signed by CL on September 17, 2018, in which Mr. Ponsford and a family member are listed as landlords, CL agreed he was offering to lease Mr. Ponsford's residential premises. The Application sets out the monthly rent as $2,750. In the same document, CL further agreed:

> If this offer is accepted and [CL] fails to sign the Landlord's Residential Tenancy Agreement, or take possession of the rental unit, [CL] will be liable for the payment of the equivalent of one month's rent to the Landlords and any related expenses incurred by the Landlords.

13. At the same time, on September 17, 2018, Ryder sent CL a letter offering him a position in BC, which involved a transfer from out of province. CL formally accepted this offer on September 18, 2018. The evidence shows Ryder and CL had already had some discussions about the transfer before this date. Ryder agreed to reimburse CL certain relocation or moving expenses.

14. However, there is no argument that Ryder offered to pay Mr. Ponsford for CL's rent and Ryder is not named on the Application. There is also no evidence before me that CL ever represented to Mr. Ponsford that Ryder would be responsible for paying his rent. Ryder denies it was responsible to pay for CL's accommodation under its employment agreement with CL, as discussed further below.

15. On September 19, 2018, CL emailed Mr. Ponsford with an apology and with words to the effect that he would not be renting the property. Ryder's evidence is that CL stopped working for it in 2019, and the evidence shows neither party knows where CL is presently located.

Limitation Act – is Mr. Ponsford's claim out of time?

16. Quite apart from its other defences, Ryder says Mr. Ponsford's claim is out of time. The *Limitation Act* (LA) sets out a basic 2-year period for an applicant to start their claim. Mr. Ponsford filed his application with the CRT, and paid the required fee, on October 14, 2020. This means that if Mr. Ponsford's claim against Ryder was "discovered" before October 14, 2018, his claim is out of time.

17. Section 8 of the LA says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that loss had occurred, that the loss was caused or contributed to by an act or omission of the person against whom the claim may be

made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.

18. It is undisputed CL effectively told Mr. Ponsford in a September 19, 2018 email that he would not be renting the property. Ryder says that Mr. Ponsford discovered his claim when he received that email. If that is true, then Mr. Ponsford's claim is out of time.

19. In his application, Mr. Ponsford said he became aware of his claim on October 16, 2018, which was the day after CL's tenancy was to have started. In his submissions, Mr. Ponsford says he encouraged CL not to breach the tenancy agreement and that CL did not in fact breach it until after October 15, 2018. So, Mr. Ponsford says his claim is in time.

20. In essence, CL's September 19, 2018 email was what is known in law as an anticipatory breach. In other words, Mr. Ponsford was free to treat CL's email as a statement that CL would not move forward with the tenancy as set out in the Application. However, this does not mean the running of time started at that point. I say this because Mr. Ponsford did not suffer a "loss" until at least October 16, 2018, which is what triggers the running of time under the LA. Put another way, his loss had not yet crystallized or accrued before the move-in date (see *Arishenkoff v. British Columbia*, 2004 BCCA 299 at paragraph 62). CL would not have been liable to pay the one month's rent under the Application clause until at least October 15, 2018, and so it cannot be said that Mr. Ponsford's claim against Ryder for that one month's rent was discoverable before that date. I find Mr. Ponsford's claims are in time.

Is Ryder responsible for CL's failure to complete the tenancy agreement?

21. In short, I find Ryder is not responsible for CL's failure to sign the tenancy agreement or take possession of the rental unit, and is not responsible for the claimed $2,750 for the one month's notice as provided for in the Application. My reasons follow.

22. First, Ryder was not a party to the Application contract between Mr. Ponsford and CL. The legal doctrine known as "privity of contract" means that a contract cannot

give rights or impose obligations on persons who are not parties to the contract. In other words, a person must agree to a contract's terms in order to be bound by them.

23. Second, I acknowledge Mr. Ponsford argues Ryder is vicariously responsible for CL's liability under the Application. However, I agree with Ryder that an employer's vicarious liability only applies to tortious conduct (such as in negligence cases), and not in claims for breach of contract: see *Khullar v. Lee*, 2011 BCSC 1658 at paragraph 100).

24. Third, I acknowledge Mr. Ponsford seeks to argue that through the law of agency, or workers compensation law requirements, that Ryder can still be held responsible. I disagree. In *Khullar*, the court concluded that employers are only liable for tort claims committed by their employees within the scope of their employment. Mr. Ponsford argues at some length that CL moved to BC for work, and so on that basis Ryder is responsible for CL's rental contract. Yet, as noted above, there is nothing in the Application that suggests Ryder is responsible for CL's rent. There is no evidence CL was only Ryder's agent in that agreement. Rather, CL made the agreement because he needed somewhere to live given his move to BC further to Ryder's employment offer. There is also nothing in the employment documentation between CL and Ryder that shows Ryder agreed to be responsible for CL's agreement with Mr. Ponsford. Further, even if Ryder had agreed to reimburse Mr. Ponsford his rent costs as part of its relocation or moving expenses agreement, that does not necessarily mean CL's rent was within the scope of his employment.

25. To the extent Mr. Ponsford argues CL committed a tort for which Ryder is vicariously liable, I find that is not established. I find Mr. Ponsford's claim is based in contract, given the language quoted above from the Application, and so vicarious liability does not apply. Mr. Ponsford cites *Bazley v. Curry*, 1999 CanLII 692 (SCC), as the leading case on vicarious liability. However, I find *Bazley*, a tort case about an employer's vicarious liability for sexual assault, does not assist Mr. Ponsford. In any event, I find there is an insufficient employment connection to the Application.

26. Next, I find the workers compensation scheme Mr. Ponsford relies on does not establish that Ryder is vicariously liable for CL's responsibility under the Application. The compensation scheme addresses whether a person was a worker when a personal injury was sustained and if so whether that worker is entitled to the statutory compensation coverage. I find the workers compensation argument irrelevant to the issue of Ryder's civil liability for CL's obligations under the Application.

27. Overall, I find no legal basis for Ryder to be held responsible for CL's obligations under the Application. I do not need to address Ryder's other arguments in the circumstances. I dismiss Mr. Ponsford's claim for $2,750.

28. 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. Mr. Ponsford was unsuccessful so I dismiss his claim for reimbursement of CRT fees and expenses. Ryder did not pay fees or claim dispute-related expenses.

ORDER

29. I order Mr. Ponsford's claims and this dispute dismissed.

Shelley Lopez, Vice Chair