



Civil Resolution Tribunal

Date Issued: April 1, 2021

File: SC-2020-006723

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Semenoff v. Many Ways Home Housing Society*, 2021 BCCRT 362

B E T W E E N :

ROBERT SEMENOFF

APPLICANT

A N D :

MANY WAYS HOME HOUSING SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a transitional housing tenancy. The applicant, Robert Semenoff resided at the respondent, Many Ways Home Housing Society's (Many Ways Home), transitional housing program. Mr. Semenoff says that Many Ways Home owes compensation after allegedly evicting him. Mr. Semenoff says it owes a \$250 rent

refund, a \$250 deposit refund, \$200 for missing personal items and \$1,200 for the cost of temporary accommodations.

2. Many Ways Home denies Mr. Semenoff's claims. It says that it did not evict him. Rather, it says the police removed Mr. Semenoff on its own. Further, Many Ways says that Mr. Semenoff is not entitled to rent or security deposit refunds because the government paid them. Many Ways Home says it let Mr. Semenoff pickup his personal items.
3. Mr. Semenoff is self-represented. Many Ways Home is represented by an employee or principal.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. Section 4(f) of the *Residential Tenancy Act* (RTA) says the RTA does not apply to living accommodation provided as transitional housing, which is what Many Ways

Home undisputedly provided to Mr. Semenoff. Therefore, I find the RTA does not apply, and the CRT has jurisdiction to resolve this dispute.

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.

ISSUES

9. The issues in this dispute are:
 - a. Did Many Ways Home breach the rental agreement by evicting Mr. Semenoff without notice?
 - b. Must Many Ways Home refund Mr. Semenoff all or part of the unused August 2020 rent?
 - c. Does Many Ways Home owe Mr. Semenoff the alleged cost of his temporary accommodations?
 - d. Must Many Ways Home refund Mr. Semenoff all or part of the \$250 security deposit?
 - e. Does Many Ways Home owe Mr. Semenoff damages for his alleged loss of personal items?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Mr. Semenoff, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that Mr. Semenoff moved into Many Ways Home's transitional housing program on July 4, 2020. Further, it is undisputed that the government paid Many Ways Home a \$250 security deposit and Mr. Semenoff's August 2020 rent. Although neither party provided a written rental agreement, I find that the parties had a binding contract based on their mutual agreement to rent Mr. Semenoff a room.
12. The parties held a meeting on August 14, 2020 to discuss residents' complaints about Mr. Semenoff. Mr. Semenoff provided an audio recording of the approximately 90 minute meeting. During the meeting, Many Ways Home's employees provided Mr. Semenoff with a behavior conduct contract to review. While Mr. Semenoff was reviewing the document, police officers entered and told him that he needed to leave.
13. Many Ways Home denies it evicted Mr. Semenoff and says that the police officers independently decided to remove Mr. Semenoff. However, in the audio recording, the police officer says that Many Ways Home asked them to remove Mr. Semenoff. This is also confirmed in the police officer's written report. Based on the audio recording and the police report, I find that Many Ways Home asked the police to remove Mr. Semenoff. So, I find that Many Ways Home evicted him.
14. The police contacted a shelter and confirmed that Mr. Semenoff could stay there. The police allowed Mr. Semenoff an opportunity to pick up essential items and they offered to drive Mr. Semenoff to the shelter. Mr. Semenoff declined transportation and said that he would walk to the shelter. Many Ways Home said that it would hold the rest of his possessions for 14 days. Mr. Semenoff gave Many Ways Home his keys and left the property.

Breach of contract

15. Many Ways Home says that Mr. Semenoff's conduct during the August 14, 2020 meeting was aggressive and erratic which justified his immediate removal. In essence, Many Ways Home is claiming that Mr. Semenoff's conduct fundamentally breached the contract. A fundamental breach is a breach that destroys the whole purpose of the contract and makes further performance of the contract impossible (See *Bhullar v. Dhanani*, 2008 BCSC 1202.)
16. Whether a breach of contract is a fundamental breach matters because there are different remedies available to the wronged party. For most contract breaches, the wronged party can claim damages against the other party for a breach of contract. For a fundamental breach, the wronged party can end the contract immediately. (See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA).) Applied to this case, if Mr. Semenoff fundamentally breached the contract, Many Ways Home could end the contract without further responsibility to him.
17. The test for whether a breach of contract is a fundamental breach is an objective test. That means that I must assess the nature of the breach from the perspective of a reasonable person in Many Way Home's position. For the following reasons, I find that a reasonable person would not consider the rental contract to be completely undermined by Mr. Semenoff's conduct at the August 14, 2020 meeting.
18. Many Ways Home says that Mr. Semenoff's conduct during the meeting made its staff feel uncomfortable and threatened. It says that Mr. Semenoff became very aggressive and he was yelling, slamming his cup on the table, throwing his head and crying loudly. However, I find that the audio recording shows that Mr. Semenoff generally spoke at a regular conversation volume and his comments were not aggressive or threatening. Mr. Semenoff did appear to cry at one point during the meeting. However, I do not find this conduct fundamentally breached the contract.
19. Further, I am not satisfied that it was impossible for Mr. Semenoff to continue residing at the property. Although Many Ways Home says that Mr. Semenoff previously broke

its behaviour rules and interfered with other residents, rather than immediately evicting him, Many Ways Home held a meeting with Mr. Semenoff on August 14, 2020 to discuss changing his conduct. When the police officers told Mr. Semenoff to leave, he was reviewing Many Ways Home's behaviour conduct agreement. The audio recording showed that Mr. Semenoff appeared to be open to adjusting his conduct to continue his stay. I am not satisfied that it would be impossible to continue to Mr. Semenoff's occupancy based on his conduct at the meeting.

20. For the above reasons, I find that Mr. Semenoff did not fundamentally breach the contract.
21. In the absence of a contractual end date, I find that Many Ways Home can end the rental contract by giving Mr. Semenoff reasonable notice (See, *Hendry v. Graycrest Resort Ltd.*, 2000 BCSC 1855 (CanLII)). I find that Many Ways Home ended the contract when it asked the police to remove Mr. Semenoff on August 14, 2020. Based on the audio recording, I find that Many Ways Home did not provide any notice before it ended the contract. So, I find that Many Ways Home breached the rental agreement by evicting Mr. Semenoff without notice.

August rent refund

22. Mr. Semenoff argues that he is entitled to a refund of the unused August 2020 rent. Many Ways Home says the unused rent was paid by the government so the government is entitled to the unused portion.
23. Mr. Semenoff has the burden of proving his claim and I find that he has failed to provide sufficient evidence to prove he has suffered a loss from the August 2020 rent payment. Mr. Semenoff does not dispute Many Ways Home's submission that the government paid the rent and there is no evidence that Mr. Semenoff is obligated to repay the rent to the government. I find that Mr. Semenoff has failed to provide that has suffered a loss from the August 2020 rent payment and I dismiss this claim.

Cost of temporary accommodations

24. In his Dispute Notice, Mr. Semenoff requested \$1,200 for the cost of temporary accommodations. However, Mr. Semenoff withdrew this claim in his submissions and he did not provide any evidence in support of it. So, I dismiss this claim.

Security deposit refund

25. It is undisputed that the government paid Many Ways Home a \$250 security deposit for Mr. Semenoff's tenancy. However, Mr. Semenoff says that he must repay this deposit to the government. He says the \$250 is repaid to the government through monthly \$20 deductions from his benefits. Mr. Semenoff provided a November 4, 2020 government statement showing that it paid Many Ways Home a \$250 deposit on July 6, 2020. The government statement also showed that Mr. Semenoff owed the government \$190. I find that this \$190 debt is consistent with Mr. Semenoff's submission that he must repay the security deposit to the government in monthly deductions from his benefits.

26. Many Ways Home says that the security deposit is payable to the government, not Mr. Semenoff, since the government paid the security deposit. However, Many Ways Home did not provide any supporting documents. Further, in its submissions, Many Ways Home says that it has not yet returned the \$250 to the government. Based on the government's statement showing that Mr. Semenoff owes the government for the deposit payment, I find that the deposit refund is payable to Mr. Semenoff if there was no damage.

27. So, does Many Ways Home owe Mr. Semenoff the \$250 deposit?

28. The law may include implied terms in contracts even if the parties did not specifically consider them. I find it was an implied term of the contract that Mr. Semenoff would not damage Many Ways Home's property beyond ordinary wear and tear. I also find it was an implied term that Mr. Semenoff would leave the property in reasonably clean condition.

29. Many Ways Home says that it is entitled to keep the damage deposit because it had to clean his room and take several bags of rotten food, soiled linens and contaminated items to the dump. Many Ways Home sent Mr. Semenoff an August 18, 2020 invoice for \$1,422. The invoice has charges of \$786 for cleaning his room, \$286 for dump fees and \$350 for staff hours. Since Mr. Semenoff did not dispute leaving his room in an unclean condition, I find that the cleaning services itemized in the August 18, 2020 invoice were needed and that these cleaning costs which exceeded the \$250 deposit. So, I find that Mr. Semenoff is not entitled to a deposit refund.

Personal items

30. Mr. Semenoff asks for compensation for missing items from his Many Ways Home's room. Mr. Semenoff was permitted to take a few essential items when he left the property. The police told him to contact Many Ways Home later to pickup the rest of his belongings. Many Ways Home told Mr. Semenoff that it would store his personal items for 14 days.

31. Mr. Semenoff says he arranged 3 visits to retrieve his possession. It is undisputed that Many Ways Home offered to send Mr. Semenoff's personal property to his emergency shelter. However, Mr. Semenoff says the shelter did not provide secure storage and Many Ways Home was unwilling to send his items to his storage locker.

32. Mr. Semenoff says he is missing small items such bedbug powder, disinfectant spray, food items, kitchen utilities, nutritional supplements, and electric toothbrush heads. Mr. Semenoff did not provide receipts for the missing items but he estimates these missing items are worth \$100. Mr. Semenoff also says he is missing a 3D printer kit that he purchased in 2017. Mr. Semenoff says he does not have a receipt but he says online sales listing show that the product costs \$282.

33. I find a bailment relationship was created between the parties and when Many Ways Home agreed to store Mr. Semenoff's possessions for 14 days. The law of bailment is about the obligations on one party to safeguard another party's possessions. The bailor (here, Mr. Semenoff) is a person who gives the goods or possessions and the

bailee (here, Many Ways Home) holds or stores them. The bailee has to return the bailed goods upon demand from the bailor.

34. I find that Mr. Semenoff has not proved that Many Ways Home failed to exercise reasonable care in the circumstances (see, *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273). Rather, I find that Many Ways Home made Mr. Semenoff's items available for pick up and it offered to use its own resources to transport his items to his shelter. For the above reasons, I dismiss Mr. Semenoff's claim for compensation for missing property.
35. 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. In this dispute, Many Ways Home did not pay any CRT fees and there is no request for reimbursement of dispute-related expenses.

ORDER

36. I dismiss Mr. Semenoff's claims and this dispute.

Richard McAndrew, Tribunal Member