



# Civil Resolution Tribunal

Date Issued: April 27, 2021

File: SC-2020-008672

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mendes v. Sodhi*, 2021 BCCRT 439

BETWEEN:

MIRA MENDES

**APPLICANT**

AND:

GURINDER SODHI and THE OLD BAVARIA HAUS RESTAURANT INC.

**RESPONDENTS**

AND:

MIRA MENDES

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. The applicant and respondent by counterclaim, Mira Mendes, signed a 1-year commercial lease agreement with the respondent and applicant by counterclaim, The Old Bavaria Haus Restaurant Inc. (Bavaria).
2. At the end of the lease period, Bavaria refunded Ms. Mendes' \$25,000 damage deposit without interest. Ms. Mendes says the lease provided for 3% annual interest on the deposit, so she seeks \$750 in interest. She also seeks \$733.33 as reimbursement for the unused portion of a liquor licence that remained with the restaurant after the lease ended. Ms. Mendes represents herself.
3. Bavaria says there was an "understanding" that Ms. Mendes would not pursue these claims if Bavaria returned her security deposit without deductions. In the counterclaim, Bavaria says Ms. Mendes damaged or removed items worth over \$20,000. Bavaria limits its counterclaim to \$5,000, the Civil Resolution Tribunal (CRT)'s small claims monetary limit.
4. The other respondent and applicant by counterclaim, Gurinder Sodhi, is an owner of Bavaria and represents himself Bavaria in this dispute.
5. For the reasons that follow, I allow Ms. Mendes' claims against Bavaria and dismiss all other claims and counterclaims in this dispute.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. 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.

### ***Parties and claims***

10. Ms. Mendes says she named Mr. Sodhi as a respondent because during the lease period she dealt exclusively with him although he did not sign the lease. In general, an owner of a corporation is not personally liable for the corporation's actions or responsible to pay its debts. There is no evidence that Mr. Sodhi was acting in a personal capacity rather than as an owner of Bavaria. As there is no other apparent basis for the claim against Mr. Sodhi, I dismiss the claim against him.
11. Similarly, as Mr. Sodhi was not a party to the lease and provided no other basis on which Ms. Mendes could be liable to him, I dismiss his counterclaim. This leaves Ms. Mendes' claim against Bavaria and Bavaria's counterclaim against Ms. Mendes.

## **ISSUES**

12. The issues in this dispute are:

- a. Is Ms. Mendes entitled to the liquor licence refund and interest on the deposit, or did she waive her rights to those amounts?
- b. To what extent, if any, is Bavaria entitled to damages for missing or damaged items?

## **EVIDENCE AND ANALYSIS**

13. As the applicant in this civil dispute, Ms. Mendes must prove her claim on a balance of probabilities. Bavaria must prove its counterclaims to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
14. On September 30, 2019, Ms. Mendes entered into a written 1-year lease agreement with Bavaria (lease). It is undisputed that Ms. Mendes had been operating the restaurant since 2018, although there are no copies of previous leases in evidence.
15. Bavaria says its owners decided not to renew the lease and to run the restaurant themselves as of October 1, 2020.
16. In the Dispute Responses, Bavaria agreed with Ms. Mendes' claim descriptions but disagreed with her requested remedies. Based on Bavaria's submissions, it does not dispute Ms. Mendes' claimed amounts, namely \$750 for interest on the security deposit and \$733.33 for the liquor licence fee. I find Ms. Mendes' claims to these amounts are supported by the lease terms and by receipts for the liquor licence fee, so I find she is presumptively entitled to these amounts, subject to the 2 remaining issues raised by Bavaria that I discuss below.

***Did Ms. Mendes waive her right to claim interest and the liquor licence costs?***

17. In October 2020, Bavaria refunded Ms. Mendes' \$25,000 security deposit through their respective lawyers in trust.
18. Bavaria's lawyer wrote on the October 27, 2020 cheque to Ms. Mendes' lawyer that it was the "lease deposit" and "full and final payment".
19. Ms. Mendes says her lawyer made it clear that the security deposit reimbursement was not a settlement.
20. By letters on October 28 and October 30, 2020, Ms. Mendes' lawyer advised Bavaria's lawyer that Ms. Mendes was not waiving the right to interest and the liquor license refund by accepting the security deposit. Ms. Mendes' lawyer asked Bavaria's lawyer to confirm that the funds were being released accordingly.
21. There is no response in evidence. However, on November 4, 2020, Ms. Mendes' lawyer emailed Ms. Mendes to confirm that Bavaria's lawyer agreed that Ms. Mendes' lawyer could release the funds.
22. Bavaria does not say that its lawyer acted against its instructions, so I find Bavaria likely agreed to release the deposit knowing it was not a full and final settlement of the issues and knowing she intended to pursue the 2 claims in this dispute. I find Ms. Mendes did not waive her right to pursue these claims.

***Are the respondents entitled to damages for missing or damaged items?***

23. As noted above, Bavaria says Ms. Mendes damaged and removed items worth \$20,000 but limits its counterclaim to \$5,000.
24. Bavaria says the lease made Ms. Mendes responsible for any missing or damaged property. Clause 46 says Ms. Mendes will surrender the premises in as good a state and condition as they were at the commencement of the lease, reasonable use and wear excepted. Clause 18 says Bavaria will return the security deposit and interest

to Ms. Mendes less the cost of “any damages attributable” to Ms. Mendes’ operations, but says no deduction will be made for damage due to “reasonable wear and tear.”

25. It is undisputed that on September 30, 2020, after the restaurant closed, Mr. Sodhi and Ms. Mendes completed a walkthrough inspection. Mr. Sodhi signed an acknowledgement that all equipment and chattels were in good working condition and the security deposit would be refunded. I find this acknowledgment is evidence that items were in good working condition. However, I find it does not entirely preclude Bavaria’s claim if it can show that damaged or missing items were not reasonably discoverable during the September 30, 2020 inspection.
26. Bavaria says it took time to discover all the missing items and damages. One example is the closed-circuit television system (CCTV). Bavaria says Ms. Mendes took the CCTV receiver to hide the fact that she damaged several cameras. Bavaria says once it installed a new receiver it discovered that more than half the cameras were not working and it had to purchase a new CCTV system. I find this explanation inconsistent with Bavaria’s receipts. The receipt for the CCTV system is dated December 8, 2020, but the receipt for the receiver is dated December 27, 2020.
27. Ms. Mendes provided a receipt for a CCTV receiver/recorder, showing that she purchased it in 2018. I find it more likely that Ms. Mendes took the receiver because it was hers, not to hide any non-functional cameras. Ms. Mendes also provided a September 30, 2020 photo that appears to show the cameras operational and feeding to the receiver. Moreover, Bavaria did not provide any evidence of damaged cameras, such as a photo of the CCTV feeds. On balance, I find the evidence does not establish that Ms. Mendes damaged any cameras.
28. In any event, clauses 12 to 14 of the lease said Ms. Mendes will pay operating costs, but operating costs exclude the cost of any capital replacements or the replacement of equipment and chattels whose failure to operate were no fault of the tenant. A new CCTV system is a capital replacement for which Ms. Mendes is not responsible if she did not damage it (see *Minister of National Revenue v. Haddon Hall Realty Inc.*, 1961 CanLII 93 (SCC)). I dismiss this aspect of the counterclaim.

29. There is a service charge for cleaning beer lines and faucets, dated October 2, 2020, but no evidence about how often these items need to be cleaned. Without explanation, I am not prepared to infer that this is anything other than an operating cost to be paid by the restaurant operator, or reasonable wear and tear. Moreover, there is no evidence of the condition of the beer lines and faucets at the start of the lease. There are other charges on the receipt, but they are not explained.
30. As for the items Ms. Mendes removed, on September 11, 2020 Bavaria's lawyer wrote to Ms. Mendes' lawyer stating that she was only to remove inventory and some lawn chairs and personal items. Bavaria says by not immediately responding Ms. Mendes agreed that nothing else in the restaurant belonged to her. I disagree. The removal of items was one of several items Bavaria wanted addressed as part of the lease termination. The letter asked Ms. Mendes to supply a list of items belonging to her that she would be taking. Ms. Mendes provided Mr. Sodhi that list on September 30, 2020.
31. Bavaria says the missing items included a point-of-sale system, cutlery, cookware, kitchenware, furniture, and tablecloths. It provided receipts documenting what it spent to "replace" these items. Ms. Mendes says the items she removed were hers, purchased during the lease period. She provided receipts confirming the dates of purchase. Based on the receipts, I accept that Ms. Mendes was entitled to take the items she took.
32. Bavaria has provided no evidence that any of the items existed in the restaurant before the lease. Clause 27 of the lease says chattels (moveable property) will be photographed and listed at the start of the lease term and attached to the lease. There are no photographs of any items attached to the lease or provided in evidence. Bavaria attempts to rely on assertions that things existed, unsupported by any photographic or documentary evidence, despite a clear term in the contract setting out how to establish what property belonged to it.

33. Bavaria also does not dispute that Ms. Mendes offered Mr. Sodhi full restaurant access to perform an inventory check on what he acquired when he purchased the restaurant from the previous owner, but he declined.
34. In the circumstances, I find Bavaria has not proved any damaged or lost items attributable to Ms. Mendes, and I dismiss Bavaria's counterclaim.
35. The *Court Order Interest Act* applies to the CRT. Ms. Mendes is entitled to pre-judgment interest on the \$1,483.33 owed from October 1, the day after the lease ended, to the date of this decision. This equals \$3.80.
36. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. I find Ms. Mendes is entitled to reimbursement of \$125 in CRT fees. I dismiss Bavaria's claim for CRT fees. Neither party claimed dispute-related expenses.

## **ORDERS**

37. Within 14 days of the date of this order, I order Bavaria to pay Ms. Mendes a total of \$1,612.13, broken down as follows:
  - a. \$1,483.33 in debt under the lease,
  - b. \$3.80 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 for CRT fees.
38. Ms. Mendes is entitled to post-judgment interest, as applicable.
39. I dismiss Ms. Mendes' claims against Mr. Sodhi.
40. I dismiss Bavaria's and Mr. Sodhi's counterclaims.
41. 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.

42. 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.

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Micah Carmody, Tribunal Member