



Civil Resolution Tribunal

Date Issued: May 4, 2021

File: SC-2020-008302

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CA Realty Ltd. v. Ebunch Data & Development Ltd.*, 2021 BCCRT 471

B E T W E E N :

CA REALTY LTD. DBA CREIGHTON AND ASSOCIATES REALTY

APPLICANT

A N D :

EBUNCH DATA & DEVELOPMENT LTD. and INDERPAL LEHAL also
known as INDERPAL SINGH

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about rent and other payments under a commercial lease.

2. The applicant landlord is CA Realty Ltd. dba Creighton and Associates Realty (Creighton). Creighton says the respondents, Ebunch Data & Development Ltd. (Ebunch) and Inderpal Lehal, also known as Inderpal Singh, failed to pay 4 months' rent at \$1,321.20 per month, totaling \$5,284.50. Creighton also says the respondents left the property in poor condition, requiring repair. Creighton asks for \$5,000, so I find Creighton abandons its claim beyond the \$5,000 monetary limit in the small claims jurisdiction of the Civil Resolution Tribunal (CRT).
3. Ebunch failed to file a Dispute Response as required and has not participated in this dispute. So, I find it is in default, as discussed further below. Mr. Lehal is also a party to the lease, and, I infer, a principal of Ebunch. Mr. Lehal says Creighton advised that he could end the lease early without penalty.
4. Creighton is represented by its owner, Steve Creighton. Mr. Lehal represents himself.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

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. Was Ebunch required to pay rent until the end of the lease?
 - b. If so, to what extent, if any, is Mr. Lehal responsible for the payments?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil dispute, Creighton must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. The evidence includes a September 2018 commercial lease (lease) for office space in Richmond, BC (property). The lease is between Creighton and "Time HR Solutions Ltd. dba Ebunch" (Time), with Mr. Lehal as indemnifier, meaning he agreed to compensate Creighton for any losses. The corporate respondent Ebunch is not a party to the lease. The parties in this dispute do not explain Ebunch's relation to Time.
12. As noted above, Ebunch did not provide a dispute response and is in default. Where a respondent is in default, liability is assumed. This means that it is generally reasonable to assume that Creighton's position on claims against Ebunch is correct. I therefore find that Ebunch is liable to Creighton for unpaid rent of \$5,000.

13. The parties do not explain Mr. Lehal's relation to Ebunch, but I infer from the evidence that he was a principal. I considered whether Mr. Lehal's evidence could provide a defence to the claim against Ebunch. However, Mr. Lehal does not deny Ebunch's obligations as a tenant under the lease. For the purposes of this decision, I find Ebunch was the tenant under the lease.
14. The lease was for a 2-year term ending August 31, 2020. The base rent was \$915 per month, and Ebunch was also responsible for additional rent, representing operating costs and costs of additional services. Mr. Lehal does not dispute Creighton's calculation of total monthly rent (base rent plus additional rent) at \$1,321.20, so I accept this amount as correct.
15. It is undisputed that Ebunch moved out of the property in April 2020. Mr. Lehal says he had Creighton's authorization to end the lease early. He relies on 2 emails in evidence and his recollection of a phone call.
16. In a January 2019 email, Mr. Creighton mentioned that his plan "right now" was to list the property for sale soon, targeting a completion date to line up with the end of the lease, August 31, 2020. Mr. Creighton added that "if you find a place to move before the end of the lease that will be fine too."
17. In an August 2019 email, Mr. Lehal asked Creighton to find a bigger space for Ebunch to expand. Mr. Creighton responded with some listings and suggestions, and said "Ok to move anytime... I can make use of the space."
18. Mr. Lehal also says by telephone, on a date not provided, Mr. Creighton said he "was okay" if Mr. Lehal chose to "leave early."
19. Mr. Lehal says in March 2020 his business was not doing well. He says since Creighton had already authorized early termination, he decided to end the lease.
20. In contrast, Creighton says it was only in preliminary negotiations with Mr. Lehal about early termination if he wished to move into a bigger space. It says those negotiations ended in September 2019 when Mr. Lehal said he no longer needed more space.

Creighton says it would not have been able to “make use of the space” in April 2020 as demand was much lower than in August 2019. Creighton says it was unable to find a new tenant for the property until October 2020.

21. As for the January 2019 email, Creighton says the statement that it would be “fine” for the respondents to move before the end of the lease was an offer contingent on selling the property. It is undisputed that Creighton did not sell the property.
22. I agree with Creighton that the January and August 2019 emails discussing a possible early termination did not mean Ebunch could unilaterally end the lease 7 months later and not pay rent. Both emails were preliminary and to the extent that Creighton made offers, they were contingent on events that never materialized – either Creighton selling the property or Ebunch renting a larger space through Creighton. I find the emails cannot be interpreted as granting Ebunch a right to end the lease and its rent obligations at any time.
23. As for the phone call, Mr. Lehal provides no details, such as the date it took place, or the specific terms discussed. Although Mr. Lehal does not use these terms, I find he argues that Ebunch and Creighton had an oral collateral agreement that Ebunch could end the lease early and not pay rent. Generally, where there is a written agreement, oral collateral agreements are not enforceable if they are inconsistent with the written agreement: *Bauer v. Bank of Montreal* 1980 CanLII 12 (SCC). Not paying rent is inconsistent with the tenant’s obligation to pay rent as set out in article 3 of the lease. So, I find that even if there was an oral collateral agreement, it would be unenforceable. As well, article 14.2 of the lease says the lease may not be modified except by an agreement in writing executed by the parties.
24. Mr. Lehal signed the lease as an indemnifier. Section 15.02 says Mr. Lehal will, “as primary obligor and not as guarantor” of Ebunch’s responsibilities, “make the due and punctual payment” of all rent and other amounts payable under the lease, and indemnify Creighton against any loss.

25. Section 15.06 says that if a default occurs, the Mr. Lehal waives his right to require Creighton to pursue any remedy against Ebunch. I find a default in this context means Ebunch's failure to pay amounts owing under the lease.
26. In *Coast Capital Savings Credit Union v. Lindquist*, 2005 BCCA 353, the court discussed the difference between obligations of guarantors and covenantors. It said guarantors generally have secondary obligations triggered by the primary obligor's failure to perform. However, where the agreement's language indicates that the indemnifier is taking on a primary, unconditional obligation, the indemnifier will be held to the agreement as a co-covenantor.
27. I find that Mr. Lehal agreed to make all payments due under the lease and that Creighton is not required to pursue Ebunch first. Therefore, I find that Mr. Lehal and Ebunch, which is in default, are jointly and severally liable for the \$5,000.
28. As Creighton is awarded \$5,000 for unpaid rent, I do not need to consider the evidence about repairing and cleaning the property. I also note the lease indicated that the tenant paid a damage deposit roughly equal to the alleged repair and cleaning expenses, but Mr. Lehal made no submissions about the deposit or how it affected Creighton's claim.
29. Before this dispute began, Creighton emailed Mr. Lehal an offer to take less than \$5,000. I find it is not bound by that offer, given the respondents did not accept it and the issue proceeded to a CRT dispute.
30. The lease requires the tenant to pay interest, but Creighton did not claim interest in this dispute. The *Court Order Interest Act* (COIA) applies to the CRT. It says that pre-judgment interest under the COIA is not awarded if there is an agreement about interest between the parties. Therefore, I do not award interest.
31. 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 find Creighton is entitled to reimbursement of \$175 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

32. Within 14 days of the date of this order, I order the respondents to pay Creighton a total of \$5,175.00, broken down as follows:
 - a. \$5,000 in debt for rent, and
 - b. \$175.00 in CRT fees.
33. Creighton is entitled to post-judgment interest, as applicable.
34. 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.
35. 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.

36. As the defaulting party, Ebunch has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

Micah Carmody, Tribunal Member