Civil Resolution Tribunal

Date Issued: May 28, 2021

File: SC-2021-000514

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sparkle Beauty House Inc. v. Henderson Development (Canada) Ltd.*, 2021 BCCRT 577

B E T W E E N :

SPARKLE BEAUTY HOUSE INC.

APPLICANT

A N D :

HENDERSON DEVELOPMENT (CANADA) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about ownership of ceiling tiles. The applicant, Sparkle Beauty House Inc. (Sparkle), installed ceiling tiles in the leased commercial premises where it operated its business. Sparkle removed many of the tiles when the lease ended. Sparkle says the respondent, Henderson Development (Canada) Ltd. (Henderson),

demanded that Sparkle replace the tiles before Henderson returned Sparkle's damage deposit. Sparkle replaced the tiles and claims $4,126.80 for them.

2. Henderson says that under the lease, the ceiling tiles became part of the premises and Sparkle was not allowed to remove them. Henderson says it owes nothing.

3. In this dispute, each party is represented by an authorized 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. 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.

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.

ISSUE

8. Whether the disputed ceiling tiles became fixtures or part of the leased premises, and if not, does Henderson owe Sparkle $4,126.80 or another amount?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Sparkle must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide necessary context for my decision.

10. It is undisputed that Sparkle vacated the commercial premises at the end of a 5-year lease. Sparkle had purchased and installed ceiling tiles in a ceiling track system that it installed in the leased unit. Shortly before moving out, Sparkle removed many of the tiles. Henderson objected, said that Henderson owned the tiles under section 12.3 of the lease, and demanded that they be replaced. Sparkle says it owned the tiles, but Henderson withheld a damage deposit until Sparkle replaced the tiles. Sparkle says Henderson chose an option where Sparkle would replace the tiles and Henderson would pay for them, which Henderson denies. Although Sparkle told Henderson it expected Henderson to pay for the replaced tiles, I find the parties' correspondence shows that Henderson never agreed to this proposal, and consistently said the tiles should remain in place.

11. The parties agree that Sparkle installed the tiles and operated its business in the leased premises with Henderson's permission. However, the lease agreement in evidence, including a renewal agreement and an extension agreement, was between Henderson as landlord and two individuals, JE and SK, as tenants. JE represents Sparkle in this dispute, but JE and SK are not named as applicants and Sparkle does not describe its relationship with them. The lease said the operating name of the tenants was "to be determined later" with Henderson's approval, but I find the evidence fails to show whether Henderson explicitly approved a tenant operating name. Sparkle does not say whether JE and SK acted as Sparkle's agents when they agreed to the lease. Further, I find the evidence and submissions do not suggest that

JE and SK transferred the lease to Sparkle. Sparkle does not say how the tenants' lease permitted Sparkle to install or remove ceiling tiles.

12. The legal doctrine known as "privity of contract" means that, apart from certain exceptions that I find do not apply here, a contract cannot give rights or impose obligations on persons who are not parties to a contract. I find the evidence before me fails to show that Sparkle was a party to the lease agreement, and fails to show that JE and SK agreed to the lease on Sparkle's behalf as its agents or as part of a trust arrangement. So, I find that Sparkle has no rights or obligations under the lease agreement, although I infer that it used the premises with the tenants' permission.

13. Having said that, the relevant portion of section 12.3(a) of the lease says that alterations, additions, improvements, and fixtures constructed and installed in the leased premises and attached in any manner to the floors, walls, or ceiling, must remain upon and be surrendered with the premises and are Henderson's property. I find that this section is consistent with common law rules about chattels and fixtures. Chattels are personal, moveable property that do not form part of land. Fixtures are things attached to land or building structures in such a way that they become part of the land, and cease to be chattels.

14. In this case, I find that at common law, any fixtures installed in the premises formed part of the premises and were Henderson's property, and could not be removed without Henderson's permission. The parties do not dispute this, but they disagree about whether the ceiling tiles at issue were fixtures or chattels.

15. Sparkle's main argument is that the ceiling tiles were not "affixed" to the building, and were only set in place in a ceiling track system. Sparkle says that anything not affixed to a building is a chattel and can be removed by a tenant, citing the case *Dominion Trust Company v. Mutual Life Assurance Company* of Canada, 1918 CanLII 350 (BCCA), 43 DLR 184. *Dominion* involved safety deposit boxes, including some installed by a tenant that were not affixed to the building and were considered chattels. However, I note that the court in *Dominion* said it was well established that

chattels may become fixtures even if “they are not affixed otherwise than by their own weight”, and noted that annexation is only one of the circumstances to be considered.

16. I find the legal test for a fixture is better described in the more recent decision *Scott v. Filipovic*, 2015 BCCA 409 at paragraph 18, and can be summarized as follows:

    a. Items not attached to land are not fixtures, unless the facts show a different intent.

    b. Items attached to land even slightly are fixtures, unless the facts show a different intent.

    c. A different intent is determined objectively by facts “patent to all to see” such as the degree and purpose of attachment to land.

    d. Fixtures installed by a tenant are still fixtures, although the landlord may agree to sever them and return them to the tenant as chattels.

17. Under this test, the less permanently attached and more portable an item is, the more likely the item is not a fixture. Further, items attached to make the items function better are more likely to remain chattels, while items attached to improve the land are more likely to be fixtures. See for example *Butterman v. Kilburn*, 2020 BCCRT 613, which is not binding on me but which I find persuasive.

18. According to undisputed photos in evidence, the leased premises had a “suspended” ceiling, consisting of metal tracks fastened to the ceiling above, and ceiling tiles that fit into the tracks. The tracks held the ceiling tiles in place above the room. It is undisputed that by design, no other mechanical fasteners, such as screws, staples, or others, were needed to secure the tiles in place. Sparkle says this means the ceiling tiles were held in place by their own weight and were not “affixed” to the building. While specialized tools may not be required to remove and replace the ceiling tiles, I find that they were secured in place above the room by the metal tracks, and were not simply resting on the ground like furniture. In the circumstances, I find that despite the lack of traditional mechanical fasteners, the tiles were “affixed” to the

building more than slightly, and were not intended to be easily removed like wall-hung pictures or similar chattels.

19. Further, I find the intent of the ceiling tiles was to provide a ceiling for the premises. I find the ceiling tiles hid some of the building's mechanical and electrical systems, and I note that lights, air ducts, and other systems were installed in some of the tiles, although Sparkle left those tiles in place. Overall, I find that the purpose of the ceiling tiles was to improve the building, rather than to enhance their functionality as tiles. Under the case law cited above, this supports a conclusion the tiles were fixtures, not chattels.

20. On the evidence before me, I find that the ceiling tiles were fixtures, and that they became part of the premises when Sparkle installed them. So, I find that Henderson owned the installed tiles, and that Sparkle had no right to remove them. Given section 12.3 of the lease between Henderson and the tenants, and the lack of Henderson's agreement to pay for the ceiling tiles, I find Sparkle is not entitled to any payment for the tiles. I dismiss Sparkle's claim.

CRT FEES AND EXPENSES

21. 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. I find Sparkle was unsuccessful here, but Henderson paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

22. I dismiss Sparkle's claims, and this dispute.

Chad McCarthy, Tribunal Member