Civil Resolution Tribunal

Date Issued: June 4, 2021

File: SC-2020-008719

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stenzel v. Miller*, 2021 BCCRT 612

B E T W E E N :

DAWN STENZEL

APPLICANT

A N D :

BRIANNE MILLER and NADA GROCERY INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about an office lease. The applicant, Dawn Stenzel, says she rented an apartment-style strata lot to the respondents, Nada Grocery Inc. (Nada) and Brianne Miller, with a one-year fixed term lease. Ms. Stenzel says the respondents cancelled the lease early on April 1, 2020. Ms. Stenzel claims $4,800 for loss of rent and $150 for repairs and cleaning.

2. The respondents say that Nada is the tenant, not Ms. Miller. They also say that they properly ended the tenancy, it was a month-to-month tenancy, and that they left the property in clean condition.

3. Ms. Stenzel is self-represented. Ms. Miller represents herself and Nada, as its director.

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 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.

Jurisdiction

8. Ms. Stenzel first submitted her claim to the Residential Tenancy Branch (RTB), which concluded in an October 18, 2020 decision that it did not have jurisdiction under section 4(d) of the Residential *Tenancy Act* because the rental property was used primarily as a business office. It is therefore undisputed that the RTB does not have exclusive jurisdiction over this dispute. So, I find that the CRT can resolve this dispute under section 118 of the CRTA which covers debt and damages.

ISSUES

9. The issues in this dispute are:

    a. Does Ms. Miller or Nada owe Ms. Stenzel $4,800 for loss of rent?

    b. Does Ms. Miller or Nada owe Ms. Stenzel $150 for cleaning and repairs to the rental unit?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Ms. Stenzel must prove her 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. Ms. Stenzel and Ms. Miller signed a Residential Tenancy Agreement form lease in November 2019 (lease). It is undisputed that the monthly rent was $2,200 and Ms. Miller paid Ms. Stenzel a $1,100 security deposit.

12. Although Ms. Stenzel's application for dispute resolution names both Ms. Miler and Nada as respondents, Ms. Stenzel has not made any allegations specifically about

Nada. It is undisputed that Nada operated its business at the property, however the lease says only Ms. Miller is the tenant. The lease does not mention Nada.

13. However, the respondents say that Nada is the tenant, and not Ms. Miller. They say the property was leased to Nada for use as business office space, even though Ms. Miller's name is on the lease. I have considered whether Ms. Miller signed the lease as Nada's agent. The law of agency says that when an agent enters a contract on behalf of a principal, the agent is generally not personally liable under the contract. As Nada's director, I am satisfied that she had the authority to act as Nada's agent. However, the terms of the written lease do not say that the lease was entered on Nada's behalf. Rather, as discussed above, the lease specifically said that Ms. Miller was the tenant.

14. The respondents say that Ms. Stenzel insisted on putting Ms. Miller's name on the lease instead of Nada's so Ms. Stenzel would not need to get the strata corporation's permission to rent to a business. Ms. Stenzel denies this and says the strata corporation did not prevent business tenants. Ms. Stenzel provided a January 25, 2021 letter from the strata corporation saying that it was aware that Nada was operating a business in the strata lot and this was permissible. Ms. Stenzel says that Ms. Miller chose to rent to property in her personal capacity.

15. Given the above, I find that Ms. Miller was the tenant under the lease and Nada was not. So, I find that only Ms. Miller, and not Nada, is bound by the lease's terms. Further, since Ms. Stenzel's claims are based on the lease, I find that she has failed to prove that Nada has any obligations to her. So, I dismiss Ms. Stenzel's claims against Nada.

16. The parties disagree about whether the lease had a one-year fixed term or it was a month-to-month term. Paragraph 2 of the lease says the term started on November 1, 2019. The parties did not check any of the boxes in paragraph 2 of the lease to indicate whether the term is month-to-month or a fixed term lease. However, the parties wrote the date of October 31, 2020 beside the box for fixed term tenancies. Although the fixed term box is unchecked, I find that the parties intended to enter a

fixed term lease expiring on October 31, 2020 by entering that date on the lease. Further, Ms. Miller advertised the property for sublet just before giving notice that she was ending the lease. The sublet price she advertised was lower than her monthly rent. Ms. Miller does not explain why she tried to sublet the property at a loss rather than ending the lease if it was a month-to-month lease as she now claims. I find that, more likely than not, the lease had a fixed term expiring on October 31, 2020. So, I find that Ms. Miller owed Ms. Stenzel $2,200 monthly rent until October 31, 2020.

Frustration

17. Ms. Miller says she ended the lease because of business reductions related to the COVID-19 pandemic. Although neither party argued that the contract was frustrated, it was suggested in their submissions.

18. The lease did not contain a “force majeure” clause, which is where the parties agree about what will happen in the event of unforeseen circumstances preventing either party from fulfilling a contract. In the absence of such a clause, the common law doctrine of frustration applies which says that a contract is frustrated when an unforeseeable event occurs, for which the parties made no provision, where the contract becomes a thing radically different from that which was originally agreed (see, *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53). The unforeseen event must make it truly pointless to continue to perform the contract, not just inconvenient, undesirable, or involving increased hardship or expense for one or both parties (see *Wilkie v. Jeong*, 2017 BCSC 2131 and *Interfor Corporation v. Mackenzie Sawmill Ltd.,* 2020 BCSC 1572).

19. Here, I find that the evidence does not show that the COVID-19 pandemic radically changed the parties’ original agreement as the property continued to be available for Ms. Miller’s rent and use as originally agreed. Further, there is no evidence provided showing that the parties’ obligations changed. I find the circumstances here do not amount to a frustration of the lease.

Loss of rent

20. Ms. Miller says the she delivered a notice to end the tenancy to Ms. Stenzel on March 31, 2020, effective on May 1, 2020. Ms. Stenzel denies receiving this notice. However, it is undisputed that Ms. Miller sent Ms. Stenzel an email on April 1, 2020 ending the tenancy, effective on May 1, 2020. I find that the lease ended on May 1, 2020 and nothing in my decision turns on whether Ms. Miller gave her notice to end the tenancy on March 31 or April 1, 2020 because the contract prevented Ms. Miller from ending the fixed term lease before October 31, 2020.

21. The respondents say they vacated the property on March 31, 2020, which Ms. Stenzel does not dispute. Ms. Miller's April 1, 2020 email said that and Ms. Stenzel could keep the $1,100 security deposit and apply it to the April 2020 rent. Based on this email, I find that Ms. Miller surrendered her $1,100 security deposit. Other than the security deposit, it is undisputed that Ms. Miller did not pay any rent for April 2020 or any later months.

22. Ms. Miller argues that Ms. Stenzel agreed to end the lease by accepting the notice to end tenancy. Ms. Stenzel denies this and says that Ms. Miller unilaterally ended the lease. I agree. I find there is no evidence supporting Ms. Miller's argument that Ms. Stenzel agreed. I find that Ms. Miller ended the lease without Ms. Stenzel's agreement.

23. Ms. Stenzel posted online advertisements in April 2020 to rent the property to new tenants. Ms. Stenzel provided emails exchanged with multiple prospective tenants starting on April 7, 2020. Ms. Stenzel was able to rent the property to another tenant, starting on June 1, 2020 with a monthly rent of $1,900. Ms. Stenzel provided a copy of the new lease.

24. I find that Ms. Stenzel has reasonably mitigated her losses by finding a new tenant. After deducting the $1,100 security deposit from the April 2020 unpaid rent, I find that Ms. Miller owes a $1,100 for unpaid rent in April 2020 and $2,200 for loss of rent for May 2020. From June 1, 2020 to the expiration of the lease on October 31, 2020, I

find that Ms. Miller owes Ms. Stenzel the $300 difference between the contractual rent of $2,200 and the new tenant's rent of $1,900 each month. This totals $1,500.

25. For the above reasons, I find that Ms. Miller owes Ms. Stenzel $4,800 in lost rent.

Repairs and cleaning

26. Ms. Stenzel claims that Ms. Miller damaged the rental unit and left it unclean. Paragraph 3 of the lease addendum says that the tenant will leave the property in the same condition it was in when the tenancy started and that holes in the walls will be filled. The parties signed a condition inspection report on move-in that did not note any uncleanliness. Based on this report, I find that the property was clean when the tenancy started.

27. Ms. Stenzel provided multiple photographs showing unclean areas, paint blemishes, holes in the wall and garbage left behind. Ms. Stenzel says it took her 6 hours of labour to clean and repair the property. She claims $25 per hour for the cleaning work.

28. Ms. Miller says the property was thoroughly cleaned and the holes in the wall were authorized by Ms. Stenzel. However, the lease addendum specifically says that holes need to be filled and Ms. Miller has not provided any supporting evidence showing that Ms. Stenzel agreed to leaving these holes. I find that Ms. Miller was responsible for filling the holes under the lease terms.

29. Ms. Miller provided photographs showing the rental property before she moved out. Although the photographs do not appear to show any damage, I do not find the photographs helpful because they do not show the property's condition after she moved out.

30. Ms. Miller also provided a statement from AC, a Nada employee, saying that they thoroughly cleaned the strata lot at the end of the tenancy. Based on AC's statement, I am satisfied that they attempted to clean the property at the end of the tenancy. However, I find that, as shown by Ms. Stenzel's photographs, further cleaning and repairs were required. Based on the photographs, I find that Ms. Stenzel's request for

$150 for cleaning and repairs is reasonable. So, I find that Ms. Miller owes Ms. Stenzel $150 for repairs and cleaning.

31. The *Court Order Interest Act* applies to the CRT. Ms. Stenzel is entitled to pre-judgment interest on the $4,950 from April 1, 2020, the date Ms. Stenzel acknowledged receiving Ms. Miller's notice to end the lease, to the date of this decision. This equals $44.63.

32. 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 Ms. Stenzel is entitled to reimbursement of $175 in CRT fees. Ms. Stenzel also claims $15 in dispute-related expenses for corporate registry searches. However, since Mr. Stenzel's claim against Nada was not successful, I dismiss this reimbursement claim.

ORDERS

33. Within 30 days of the date of this order, I order Ms. Miller to pay Ms. Stenzel a total of $5,169.63, broken down as follows:

    a. $4,800 in debt for unpaid rent,

    b. $150 as cleaning and repair costs,

    c. $44.63 in pre-judgment COIA interest, and

    d. $175 in CRT fees.

34. Ms. Stenzel is entitled to post-judgment interest, as applicable, against Ms. Miller.

35. I dismiss all claims against Nada.

36. 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.

37. 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.

Richard McAndrew, Tribunal Member