



Civil Resolution Tribunal

Date Issued: January 13, 2022

File: SC-2021-003071

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nijjer Foods Ltd. v. Castelli*, 2022 BCCRT 47

BETWEEN:

NIJJER FOODS LTD. and BHARPUR NIJJER

APPLICANTS

AND:

JOHN CASTELLI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about rent allegedly owed under a commercial lease agreement. The applicants, Nijjer Foods Ltd. (Nijjer) and Bharpur Nijjer, say the respondent, John Catelli owes \$2,925 for rent arrears and late fees.

2. In the Dispute Response filed at the outset of this proceeding, Mr. Castelli generally disagreed with the applicants' claim but did not specifically deny that he owed rent arrears under the lease. Mr. Castelli also says he never received a key to the space he rented. As discussed below, Mr. Castelli did not provide any evidence or submissions, despite having the opportunity to do so.
3. The applicants are represented by a Nijjer employee. Mr. Castelli is self-represented.

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. The issue is to what extent, if any, Mr. Castelli owes the applicants \$2,925 for unpaid rent under lease agreement?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning “more likely than not”). As noted, Mr. Castelli did not provide any evidence or submissions, despite CRT staff providing him with opportunities to do so. I have read all the evidence and submissions before me, but I refer only to what I find is necessary to explain my decision.
10. On May 13, 2020, Mr. Castelli signed a 12-page document titled “Commercial Lease Agreement” as the tenant, with Nijjer as the landlord. The applicants did not explain Mrs. Nijjer’s relation to Nijjer, though I infer she is a principal. In any event, I find Mrs. Nijjer is not a party to the subject lease in her personal capacity. Therefore, I dismiss Mrs. Nijjer’s claims against Mr. Castelli, and I consider only Nijjer’s claims below.
11. The lease was for a 1-year term from June 1, 2020 to May 31, 2021. Mr. Castelli agreed to pay rent of \$300 plus GST on the 1st day of each month.
12. The applicants say that Mr. Castelli’s last rent payment was made on August 6, 2020. The evidence shows that Nijjer emailed Mr. Castelli in November and December 2020 about the rent arrears and requested an update on his status. Mr. Castelli sent Nijjer a December 7, 2020 response, apologizing, and requesting confirmation of the unpaid rent. Mr. Castelli also stated that he wished to continue with the lease.
13. The evidence shows that Nijjer continued to follow up with Mr. Castelli, as it did not receive any further rent payments. Mr. Castelli sent Nijjer a December 22, 2020 email advising his e-transfer was not working and he could not fix it until he got back to town. The applicants say this was the last communication it received from Mr. Castelli, and that he failed to pay any rent after the August 6, 2020 payment.

14. As noted, Mr. Castelli does not specifically deny that he owes Nijjer rent under the lease. I find the parties' email evidence shows Mr. Castelli acknowledged the debt, and he provided no evidence that he has made any payments since August 6, 2020. Therefore, I find Mr. Castelli failed to pay rent for September 2020 through May 2021, as agreed under the lease.
15. The applicants did not set out how they calculated the claimed \$2,925 for rent owed. As noted, the base monthly rent was \$300 plus GST, which totals \$315. The lease also provided that for any rent received after the 1st of the month, Nijjer was entitled to charge an additional \$25 after the 5th day and \$50 after the 10th day.
16. The evidence shows that Nijjer sent Mr. Castelli a March 11, 2021 demand letter requesting payment of \$2,655 for rent between September 2020 and March 2021, plus penalties for late payment of \$75 per month. I infer the total demanded was made up of the base rent for 7 months, plus 6 months of late fees.
17. In the Dispute Notice, the applicants say their claim is for outstanding rent from September 2020 to April 2021. The applicants submit that they forgave the last months' rent under the lease. So, I find Mr. Castelli owes Nijjer \$2,520 for 8 months of base rent (September 2020 to April 2021).
18. I find the applicants are also entitled to an additional \$50 per month for late payment under the lease. While Nijjer's demand letter says late fees are \$75 per month, I find the lease does not provide that Nijjer may charge \$25 after the 5th day and a *further* \$50 after the 10th day. Rather, it says only that Nijjer may charge \$50 if rent is paid after the 10th day of the month, so I restrict the late fees to \$50 per month.
19. While neither party raised the issue, I considered whether the late fees were "interest" as defined in section 347 of the *Criminal Code*, which prohibits interest at a rate above 60% per year. If the late fees were interest under the *Criminal Code*, they could be over 60% if rent was paid only a few days late.
20. In the CRT decision of *Smart Technologies Consultants Ltd. v. Dysys Media Solutions Inc.*, 2019 BCCRT 1181, a tribunal member considered fees imposed on invoices that

were overdue for more than 7 days, which I find is similar to the late fees here. The tribunal member in *Smart Technologies* found that to determine whether the fees constitute interest, the question is whether the late fees represent an agreement by the applicant to extend credit to the respondent. While CRT decisions are not binding on me, I agree with the tribunal member's reasoning and I apply it here.

21. I find the late fees under the lease are not interest under the *Criminal Code* because I am satisfied Nijjer was not charging a fee to extend credit to Mr. Castelli. As in *Smart Technologies*, I find the late fees here were intended to represent recovery of the administrative cost of dealing with overdue and delinquent rent payments. Therefore, I find Nijjer is entitled to \$50 in late fees for each month Mr. Castelli failed to pay rent before the 10th of the month. That equals \$400 in late fees (\$50 x 8 months).
22. So, I find Mr. Castelli owes Nijjer a total of \$2,920, and I order him to pay that amount.
23. I note that I find the evidence does not support Mr. Castelli's allegation that he did not receive key to the space he rented. There is no indication in the parties' emails that Mr. Castelli raised this issue as a reason for not paying rent. Further, Nijjer provided a statement from its employee confirming she provided Mr. Castelli with a key. Therefore, I find Mr. Castelli was provided with a key, and he has provided no legal basis on which to conclude he is not liable for the outstanding rent and late fees.
24. The *Court Order Interest Act* applies to the CRT. I find Nijjer is entitled to pre-judgement interest on the \$2,920 from April 30, 2021, the end of the last months' rent owing, to the date of this decision. This equals \$9.30.
25. 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. As the successful party, I find Nijjer is entitled to reimbursement of \$125 in CRT fees. Nijjer did not claim any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this decision, I order Mr. Castelli to pay Nijjer a total of \$3,054.30, broken down as follows:
- a. \$2,920 in debt,
 - b. \$9.30 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
27. Nijjer is entitled to post-judgment interest, as applicable.
28. 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.
29. 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.

Kristin Gardner, Tribunal Member