



Civil Resolution Tribunal

Date Issued: February 10, 2022

File: SC-2021-003675

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ellingson v. Riverside Resort*, 2022 BCCRT 158

BETWEEN:

TAMI ELLINGSON and JACOB ELLINGSON

APPLICANTS

AND:

RIVERSIDE RESORT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about whether a resort must return a guest's damage deposit.
2. The applicants, Tami Ellingson and Jacob Ellingson, stayed at the respondent Riverside Resort (Riverside) from March 30 to late April 2021. Riverside took a \$950

damage deposit from the Ellingsons and refused to return any of it. Riverside says the Ellingsons caused more than \$950 in damage, including missing items, damaged items and additional cleaning expenses.

3. The Ellingsons deny causing any damage and deny that items went missing or the room required additional cleaning. The Ellingsons claim the full return of the \$950 deposit.
4. The Ellingsons are represented by Ms. Ellingson. Riverside is represented by a partner.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.
9. The Ellingsons' evidence was submitted after the evidence submission deadline. Riverside was given the opportunity to respond to the late evidence, so I find there is little prejudice to Riverside in admitting it. Given the CRT's mandate that includes flexibility, I have allowed the late evidence and considered it in my decision.
10. In its Dispute Response, Riverside argued that it was not part of the "landlord tenancy act" or "manufactured home act" and it adheres to the "innkeeper's act" so the claim is not legally valid. This submission is difficult to understand. This dispute does not turn on any tenancy-based statutory rights or remedies, and the *Hotel Keepers Act* does not insulate innkeepers from breach of contract claims. As such, I find the CRT has jurisdiction over this contractual dispute about debt or damages under CRTA section 118(1)(a).

ISSUE

11. The issue in this dispute is whether Riverside is entitled to retain some or all of the Ellingsons' \$950 damage deposit.

EVIDENCE AND ANALYSIS

12. As the applicants in this civil proceeding, the Ellingsons must prove their claim on a balance of probabilities, meaning more likely than not. As it is undisputed that the Ellingsons paid a refundable damage deposit and Riverside has not returned it, I find Riverside must prove it was entitled to keep the deposit by proving its claimed

deductions. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

13. The March 27, 2021 reservation was made under the name Nancy Larose, but Ms. Ellingson's name appears in the "address" section. The parties do not explain who Nancy Larose is, but I find nothing turns on this as it is undisputed that the Ellingsons paid the damage deposit. The reservation was for a group. I infer the other applicant, Jacob Ellingson, was among the group because Ms. Ellingson says she stayed with her family.
14. The reservation was for March 30, 2021 to June 18, 2021, but the Ellingsons ended their stay early and left by the end of April. I note the Ellingsons made lengthy submissions about how dissatisfied they were with Riverside's accommodations, and Riverside made lengthy submissions about the Ellingsons' behaviour in shared spaces. I have not summarized these submissions because I find them irrelevant to whether the Ellingsons are entitled to a damage deposit refund.
15. It is undisputed that Riverside staff and the Ellingsons did an inspection upon the Ellingsons' March 30, 2021 arrival. The "move-in" inspection report is signed by both parties. It covers each room in unit 16 where the Ellingsons stayed, as well as the contents for some rooms, but notably not kitchen contents, which is what Riverside says went missing.
16. After the Ellingsons left, on May 1, 2021, Riverside wrote to Ms. Ellingson, stating there were \$966 worth of missing or damaged items. This included:
 - \$91 for 9 itemized kitchen items,
 - \$250 damaged blinds (4 missing louvers) on a bedroom window,
 - \$125 for a damaged "sheer" (I infer, curtain),
 - \$60 for steam cleaning the stairs and landing, and
 - \$440 for 11 hours of cleaning at \$40 per hour.

17. The letter said the cleaning took 15 hours but that Riverside allows 4 hours for cleaning after any long-term rental, so only 11 hours were counted.
18. Riverside's evidence includes statements from 3 employees, 2 of which provided evidence relevant to the damage deposit.
19. MM provided a written statement as Riverside's housekeeper and laundry operator. MM said in May 2021 they cleaned unit 16. They said it was very dirty and smelled strongly of dog. They said they had to rent a carpet steam cleaner and purchase 3 bottles of shampoo to do 3 deep cleans. MM confirmed that a second housekeeper was brought in, and it required 12 hours more than usual to clean a similar unit.
20. LG provided a signed written statement as Riverside's housekeeping manager. LG said they inspected unit 16 after the Ellingsons left. They said they found extensive damage, including heavily stained carpets, damaged plank flooring, "extreme markings" on walls requiring repainting of the entire unit, stained curtains and sheers, torn sheers, and broken "blind veins". They also said they found "red sauce" stains on the bed skirt, bed spread, blanket, duvet and sheets, and ink or marker stains on the second bed sheets, duvet and pillowcases. LG said it took days to bring unit 16 back to suitable condition.
21. Both statements were written in September 2021, months after the Ellingsons' stay. However, LG also documented the missing kitchen items, the damaged blinds, and the cleaning time in a May 5, 2021 email to Riverside.
22. The Ellingsons argue that Riverside has mixed up their room with a neighbouring room. The Ellingsons note that although MM's evidence is that the room smelled strongly of dog, on the Ellingson's reservation form it says "Number of pets: 0". The Ellingsons say the neighbours in the adjacent unit had a dog and one of those same neighbours dyed her hair red, which the Ellingsons say could explain the bedding stains. I find that without evidence in support, this suggestion is not enough to overcome Riverside's 2 witness statements and the May 5 email, all of which indicate the damage occurred in room 16. In addition, the Ellingsons do not actually deny

bringing a dog, they just point to the reservation form. Even if the Ellingsons did not bring a dog, it is possible MM assumed what they smelled was a dog, when it was not. On balance, I find the Ellingsons stayed in unit 16 where the damage was discovered. I accept LG and MM's evidence about the required cleaning.

23. The Ellingsons deny taking, or even using, the kitchen items. They say they packed them away when they arrived and used their own. On balance, given there was no move-in count of the kitchen items and LG did not say whether they counted items between guests, I find Riverside has not proved that the kitchen items went missing during the Ellingsons' stay. Even if it had, I would not have allowed the full claimed amounts, such as \$5 for each salad fork, which were unsupported by any evidence.
24. As for cleaning time, the Ellingsons provided a statement from "Monica" who claimed they stayed next door to the Ellingsons at Riverside and saw that staff only spent a few hours cleaning after the Ellingsons left. However, Monica's statement is unsigned, they did not provide their last name or contact information, and the message is in the form of an email sent from Tami Larose to Ms. Ellingson. There is also nothing to confirm Monica stayed at Riverside, such as a booking statement or receipt. For these reasons, I place no weight on Monica's letter. I accept that Riverside spent 11 extra hours cleaning unit 16 based on MM and LG's evidence.
25. I accept the \$440 cleaning charge based on 11 hours. I note the signed reservation form said additional cleaning would be charged at \$50 per hour, so Riverside actually could have charged the Ellingsons more. I accept the \$60 charge for steam cleaning carpets. Although there are no receipts, I find \$60 is reasonable.
26. I allow the claimed \$125 for the torn curtain sheer because \$125 was the stated value for the "curtain liner" on the signed move-in inspection. I only allow \$100, not \$250, for the missing blinds since \$100 is the amount indicated for blinds on the move-in inspection, and there is no other evidence about the blinds' cost.

27. In total, I find Riverside has established that it was entitled to withhold \$60 for steam cleaning, \$440 for additional cleaning, and \$225 for damaged items. This equals \$725. I order Riverside to refund the Ellingsons the difference between the \$950 deposit and \$725 allowed deductions, which is \$225.
28. The *Court Order Interest Act* applies to the CRT. The Ellingsons are entitled to pre-judgment interest on the \$225 from May 5, 2021, when I find the damage deposit should have been returned, to the date of this decision. This equals \$0.95.
29. 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. The Ellingsons were partially successful, so find Riverside must pay them \$62.50 for half their \$125 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order Riverside to pay the Ellingsons a total of \$288.45, broken down as follows:
 - a. \$225.00 for the damage deposit partial refund,
 - b. \$0.95 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
31. The Ellingsons are entitled to post-judgment interest, as applicable.
32. 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.

33. 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.

Micah Carmody, Tribunal Member