



Civil Resolution Tribunal

Date Issued: February 23, 2022

File: SC-2021-005273

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Feng v. Nanping*, 2022 BCCRT 197

BETWEEN:

DU FENG

APPLICANT

AND:

ZOU NANPING

RESPONDENT

AND:

DU FENG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a parking stall rental agreement and related issues. The respondent and applicant by counterclaim is Zou Nanping. The applicant and respondent by counterclaim is Du Feng.
2. Mr. Du rented a parking stall from Ms. Zou in her strata building. He paid \$2,239.50 up front to rent the stall for 3 years. Mr. Du says after 3 months, he discovered that their agreement contravened a strata bylaw prohibiting owners from renting parking spaces to non-residents. Mr. Du cancelled the agreement and says Ms. Zou has not returned any money or the spare key. Mr. Du seeks the following remedies:
 - a. \$60 refund for his deposit,
 - b. \$2,163 for the parking stall rental contract,
 - c. \$76.50 for an overpayment on the parking stall rental,
 - d. Ms. Zou return his vehicle key,
 - e. Ms. Zou report herself to the strata and ask for a penalty,
 - f. Ms. Zou write an apology to Mr. Du for discrimination and insults, and
 - g. \$2,299.50 as damages for discriminatory and insulting texts.
3. Ms. Zou says she refunded Mr. Du \$1,680 in cash as a refund of the rental contract payment, less agreed deductions. She says she owes nothing further. She says she tried to return Mr. Du's key, but he did not want it.
4. In the counterclaim, Ms. Zou seeks \$720 in damages for Mr. Du's early termination of the parking contract, \$1,500 for "salary and moral loss", and \$400 for seeking assistance dealing with the claim and counter-claim.
5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. 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.
8. 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.
9. 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.

Claims and requested remedies

10. As noted, Mr. Du seeks orders requiring Ms. Zou to apologize, return his vehicle key, and report herself to the strata and ask for a fine. An order requiring someone to do something is known in law as “injunctive relief”. Injunctive relief is outside of the CRT’s small claims jurisdiction, except where expressly permitted by CRTA section 118. Those exceptions are recovery of personal property, relief from opposing claims to personal property, and specific performance of an agreement relating to personal property or services.
11. I find that I can consider the claim for return of Mr. Du’s vehicle key because it is a claim for recovery of personal property.
12. I find the requests that Ms. Zou apologize and report herself to the strata are requests for injunctive relief and therefore outside the CRT’s small claims jurisdiction. I decline to grant these requested remedies.
13. In submissions for her counterclaim, Ms. Zou said she wished to remove the \$1,500 “salary and mental loss” claim and the \$400 “help fee” so that she could add a claim for \$2,160 for the parking stall rent refund she says she gave Mr. Du, which she says was not required under the contract.
14. The CRTA and CRT rules permit an applicant to request to amend the Dispute Notice to add new claims or remedies. Although this process was available to Ms. Zou, she did not seek to amend the counterclaim Dispute Notice. I find the purpose of a Dispute Notice is to define the issues and provide notice to the other party of the claims against it and the remedies sought. CRT rule 1.19 says that the Dispute Notice will not be amended after the dispute has entered the CRT decision process except where exceptional circumstances apply. I find no exceptional circumstances here that would warrant adding new claims at this late stage in the CRT proceeding. I also find it would undermine the purpose of the CRT’s mandatory facilitation process to add new claims, without notice, after facilitation has ended: see the non-binding but persuasive reasoning in *Graham v. The Owners, Strata Plan LMS 516*, 2021 BCCRT

1322. For these reasons, I have adjudicated Ms. Zou's claims as they appear in her Dispute Notice, including the "salary and mental loss" and "help fee" claims, the latter of which I considered in the context of dispute-related expenses below.

ISSUES

15. The issues in this dispute are:

- a. Is Mr. Du entitled to a refund of the \$60 deposit, \$2,160 first term payment, and \$76.50 alleged overpayment?
- b. Did Ms. Zou already give Mr. Du a cash refund?
- c. Is Mr. Du required to pay Ms. Zou an additional year's rent for early termination?
- d. Is Mr. Du entitled to damages for discrimination and insults?
- e. Is Ms. Zou entitled to damages for lost wages and "moral loss"?
- f. Is Ms. Zou required to return Mr. Du's key or did he abandon it?

EVIDENCE AND ANALYSIS

16. As the applicant in this civil proceeding, Mr. Du must prove his claim on a balance of probabilities, meaning more likely than not. Ms. Zou has this same burden to prove her counterclaim. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

17. Both parties say they are not fluent in English and have relied on automated translation services to translate their submissions and evidence. Given the parties speak the same language and had access to each other's evidence and translations, I accept the English translations in evidence, which neither party disputed.

18. Mr. Du says he is visiting BC on a tourist visa. Ms. Zou advertised online a long-term parking stall rental in her strata building's parkade. In February 2021, Mr. Du inquired about the parking stall, saying he wanted to rent it for 3 years. He asked for a contract. Ms. Zou did not have one, but invited Mr. Du to draft one.
19. Mr. Du supplied a contract and the parties signed it on March 15, 2021. The contract was for a 6-year period, with a payment period of 3 years, beginning in March 2021. The rent was \$2,160 for 3 years. Mr. Du paid 1 month's rent, \$60, as a deposit when the contract was signed.
20. Ms. Zou agreed to accept the first payment by a third-party cheque from a law firm. She says this was necessary because Mr. Du did not have a Canadian bank account, relatives or friends in Canada. The March 15, 2021 cheque was for \$2,239.50. Mr. Du seeks the difference, \$79.50, as part of his requested remedies in this dispute. I allow that claim as Ms. Zou has not provided a reason she was entitled to keep the overpayment.
21. On March 21, 2021, Mr. Du began parking in the rented stall. For reasons that are not fully explained, on April 1, 2021, Mr. Du also began living in a room in Ms. Zou's strata lot, by agreement. Neither party provided evidence or submissions about whether Mr. Du was required to pay rent, or paid rent, for the room.
22. It is undisputed that Mr. Du moved out and stopped using the parking space on June 1, 2021. Mr. Du says he discovered that the contract was illegal and terminated it. Specifically, he says renting the parking stall and sharing the apartment were prohibited by the strata's bylaws. The evidence does not support this conclusion, and I find Mr. Du terminated the contract for other reasons. In any event, Ms. Zou says she agreed to give Mr. Du a refund.

23. The parties disagree about what happened on June 1, 2021. Ms. Zou says she gave Mr. Du a cash refund for the balance of the rent, less certain deductions arising from their roommate relationship. Ms. Zou says Mr. Du used her in some kind of “conspiracy” to get cash. She says Mr. Du is now seeking to “cheat [her] for the second check again.” For his part, Mr. Du says he received no refund. Based on the parties’ contemporaneous text messages, on a balance of probabilities I find Ms. Zou gave Mr. Du a cash refund of \$1,680 and the parties agreed that that payment would settle all debts between them except an electricity bill, for which Mr. Du allowed a \$250 deduction from his refund, with the final amount to be determined. Ms. Zou now says the amount Mr. Du owed ended up being \$114.62, so she says she owes him \$135.38. I accept this and address it below.
24. The contract said if the lessee, Mr. Du, terminated the contract during the lease term, Mr. Du must pay an additional year’s rent. While that clause may be somewhat onerous, it is unambiguous, and Mr. Du supplied the contract. I also find that 1 year’s rent was a genuine pre-estimate of damages. Although Ms. Zou agreed to give Mr. Du a partial refund, I find she did not waive her right to claim the additional year’s rent, or \$720. I allow Ms. Zou’s claim for \$720.
25. Turning to Mr. Du’s claim for the return of his \$60 deposit, the contract was silent on whether the deposited was forfeited upon Mr. Du’s termination of the contract. In the absence of submissions or evidence to the contrary, I find the parties’ intention was for the deposit to have its normal meaning at law. This means it was non-refundable in the event of Mr. Du’s breach of contract: see *Tang v Zhang*, 2013 BCCA 52. I found above that Mr. Du breached the contract by terminating it without justification. So, I dismiss this aspect of Mr. Du’s claim.
26. What about Mr. Du’s claim for damages for discrimination and insults? He says Ms. Zou bullied and insulted him verbally and with text messages. He does not provide specifics except for 6 texts from after he moved out. I find both parties were rude to each other in the texts. There is no evidence of discrimination. As for bullying and insults, these claims are often framed as harassment, but there is no recognized tort

of harassment in BC: see *Total Credit Recovery v. Roach*, 2007 BCSC 530. In any event, Mr. Du provided no supporting evidence to prove his claimed damages, such as medical records. I dismiss this aspect of his claim.

27. I turn now to Mr. Du's claim for return of his vehicle key, which is personal property. Factors to consider when determining whether an owner has abandoned personal property include the passage of time, the nature of the transaction, the owner's conduct, and the nature and value of the property: see *Jackson v. Honey*, 2007 BCSC 1869 at paragraph 30. Mr. Du does not say what the key is worth. He made no effort to collect it. Ms. Zou texted Mr. Du at least twice to encourage him to collect the key, and Mr. Du told Ms. Zou to stop texting her. Given that conduct, I find Mr. Du has abandoned the key. I therefore dismiss his claim for the key's return.
28. I note that in his final reply submissions Mr. Du said he has given Ms. Zou more than \$500 in "extra money" to pay for things like a "ticket". Other than the "ticket", Mr. Du provided no specifics and no supporting evidence, so I find this allegation unproven.
29. I turn now to Ms. Zou's other claimed remedy. She claims \$1,500 for "salary and mental loss". However, she provided no supporting evidence of lost salary, such as wage statements or other documentation from her work. As well, she provided no supporting evidence of mental distress, such as medical records. I dismiss this aspect of her claim.
30. In summary, I find Mr. Du owes Ms. Zou \$720 for terminating the contract early, and Ms. Zou owes Mr. Du \$76.50 for the initial overpayment and \$135.38 for the electricity bill refund. The net result is that Mr. Du owes Ms. Zou \$507.92.
31. The *Court Order Interest Act* applies to the CRT. Ms. Zou is entitled to pre-judgment interest on the \$507.92 from June 1, 2021, the date the contract was terminated, to the date of this decision. This equals \$1.68.
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. Mr. Du paid \$125 but was largely unsuccessful, so I

dismiss his claim for CRT fees. Ms. Zou paid \$75 and was partially successful, so I find Mr. Du must reimburse her half her fees, or \$37.50.

33. Ms. Zou claimed \$400 to “pay someone to help [her] deal with” Mr. Du’s claim and her counterclaim, which I considered as a claim for reimbursement of dispute-related expenses. Section 20 of the CRTA provides that parties are generally expected to represent themselves in tribunal disputes. The Tribunal does not, barring exceptional circumstances which I find are not present here, allow claims for legal fees, or for a party’s time spent on a dispute. In any event, Ms. Zou does not say who helped her and she provided no receipts or evidence in support. I dismiss this claim.

ORDERS

34. Within 14 days of the date of this order, I order Mr. Du to pay Ms. Zou a total of \$547.10, broken down as follows:
- a. \$507.92 in damages,
 - b. \$1.68 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$37.50 in CRT fees.
35. Ms. Zou is entitled to post-judgment interest, as applicable.
36. I dismiss both parties’ remaining claims.
37. 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.

38. 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