



Civil Resolution Tribunal

Date Issued: May 3, 2022

File: SC-2021-007763

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vogel v. Hildebrand*, 2022 BCCRT 518

BETWEEN:

NATASCHA VOGEL

APPLICANT

AND:

DENNIS HILDEBRAND

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about short-term accommodations. The applicant, Natascha Vogel, booked the accommodations through Airbnb for the period of September 1 to October 14, 2021. She seeks a partial refund of \$2,356.77 for the period of September 4 to October 14, 2021. She alleges that Mr. Hildebrand verbally agreed to do so. She also seeks reimbursement of \$115.58 for separate lodgings for the night of September 3,

2021, when she initially moved out of Mr. Hildebrand's rental unit. She says she did so because Mr. Hildebrand made her feel unsafe.

2. Mr. Hildebrand disagrees. He says Ms. Vogel did not cancel her reservation or allow him or Airbnb to open the dates for rebooking.
3. The parties are self-represented.
4. For the reasons that follow, I find Ms. Vogel has proven most of her claims and make the orders set out below.

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. 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38,

the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

Mr. Hildebrand's Late Evidence

9. Mr. Hildebrand provided 5 images of online chat support messages with an Airbnb representative as late evidence. Ms. Vogel had the opportunity to view the late evidence and reply to it. I find the evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to Ms. Vogel in allowing the late evidence. So, I allow and have considered the late evidence, but my decision does not turn on it in any event.

ISSUES

10. The issues in this dispute are as follows:
 - a. Is Ms. Vogel entitled to a refund of \$2,356.77 based on an alleged verbal agreement with Mr. Hildebrand?
 - b. Is Ms. Vogel entitled to reimbursement of \$115.58 for accommodations for the night of September 3, 2021?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Vogel as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed facts. As shown in an August 29, 2021 Airbnb receipt, Ms. Vogel booked a 14-night stay from September 1 to September 15, 2021 at Mr. Hildebrand's property. The total cost was \$817.35. An August 10, 2021 receipt shows she also booked a 29-night stay from September 15 to October 14, 2021 for \$1,714.57, so the total cost was \$2,531.92.
13. With Mr. Hildebrand's permission, Ms. Vogel moved in early on August 31, 2021. After staying 3 nights, on September 3, 2021, she asked Mr. Hildebrand to remove some artwork to make space for a shelving unit. Mr. Hildebrand refused.
14. That same day the parties spoke again in person. Ms. Vogel recorded their conversation with Mr. Hildebrand's permission. In the recording, he said he would record the conversation as well. Only Ms. Vogel provided a recording in this dispute. I find the conversation occurred as recorded as there is no evidence to suggest otherwise.
15. In the audio recording, Ms. Vogel said that she felt uncomfortable and wished to cancel her stay. Mr. Hildebrand said, "If you want to cancel, I am prepared to give you a full refund." Ms. Vogel agreed. A September 3, 2021 Airbnb receipt shows she moved out and stayed elsewhere for that same night, at a cost of \$168.91. Ms. Vogel claims for partial reimbursement of this amount, as noted above.
16. Ms. Vogel subsequently messaged Mr. Hildebrand through Airbnb's messaging system. She said that she looked forward to "completing the refunds". Mr. Hildebrand replied, "It appears you are still booked with us and the policy is strict non refundable." Ms. Vogel said she couldn't cancel because the Airbnb system did not give the option

to receive a refund. She suggested that Mr. Hildebrand first provide the refund and then she cancel. Mr. Hildebrand refused.

17. Ms. Vogel attempted to resolve the impasse by using Airbnb as an intermediary, starting on September 5, 2021. The parties each provided chat logs that show Ms. Vogel requested a refund based on Mr. Hildebrand's verbal agreement. In a series of messages Airbnb's representative said they could not reach Mr. Hildebrand. They said they could not cancel and provide a refund until then. Airbnb added, "any refund you wish for at this time is at the host discretion".
18. Mr. Hildebrand's chat logs show that he did respond to Airbnb at some point. He says he refused a refund because Ms. Vogel made unreasonable requests about moving the displayed artwork. He did not refer to the alleged verbal agreement as recorded and in evidence. Airbnb noted that Mr. Hildebrand could provide a refund if he wished through the Airbnb system.

Issue #1. Is Ms. Vogel entitled to a refund of \$2,356.77 based on an alleged verbal agreement with Mr. Hildebrand?

19. I find that the parties entered into an enforceable verbal agreement or amendment to their existing agreement. The end result is the same in either event. I find that by saying he would provide a "full refund", Mr. Hildebrand agreed to fully refund the amount charged for the nights of September 3 to October 14, 2021. In return, Ms. Vogel would vacate the rental unit early, and she did so, as shown by the September 3, 2021 Airbnb receipt. I find there was a mutual exchange of promises, also known as consideration in contract law, that made the agreement binding.
20. Mr. Hildebrand says Ms. Vogel did not cancel her reservation or allow him to rebook. He says he cannot provide the refund because Airbnb collected the money. I find this unsupported by the Airbnb support messages. They show that Mr. Hildebrand prevented Airbnb from cancelling the reservation for rebooking by ignoring or refusing Ms. Vogel's requests, as relayed through Airbnb. Airbnb also explicitly advised Mr. Hildebrand that he could provide Ms. Vogel a refund through Airbnb's system. So, I

find the evidence shows Mr. Hildebrand was able to perform his obligations but chose not to do so.

21. Given the above, I find that Mr. Hildebrand breached the parties' verbal agreement and must refund Ms. Vogel for accommodations from September 4 to October 14, 2021, on a prorated basis. I accept Ms. Vogel's undisputed calculation that this equals \$2,356.77.

Issue #2. Is Ms. Vogel entitled to reimbursement of \$115.58 for separate lodgings?

22. Ms. Vogel says that Mr. Hildebrand should reimburse her for accommodation for the night of September 3, 2021. She says she moved out because of Mr. Hildebrand made her feel unsafe.
23. I find it unproven that Mr. Hildebrand acted in an objectively threatening manner so that Ms. Vogel had no choice but to move out. In the recording Mr. Hildebrand was calm. The recording and other evidence also indicate that he did not stay in the same space. So, I dismiss this claim.
24. The *Court Order Interest Act* applies to the CRT. Ms. Vogel is entitled to pre-judgment interest on the \$2,356.77 refund from September 3, 2021, the date of the verbal agreement, to the date of this decision. This equals \$7.04.
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. I see no reason in this case not to follow that general rule. I find Ms. Vogel is entitled to reimbursement of \$125 in CRT fees.
26. Ms. Vogel also claimed \$196 as reimbursement for legal advice. She did not provide a receipt to support this amount, so I find it unproven both as a separate claim or dispute-related expense. I note that under CRT rule 9.5(3), such dispute-related legal fees are only recoverable in extraordinary circumstances, which I find are not present here.

ORDERS

27. Within 14 days of the date of this order, I order Mr. Hildebrand to pay Ms. Vogel a total of \$2,488.81, broken down as follows:
- a. \$2,356.77 as reimbursement for short-term accommodation fees,
 - b. \$7.04 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
28. Ms. Vogel is entitled to post-judgment interest, as applicable.
29. 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.
30. 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.

David Jiang, Tribunal Member