



Civil Resolution Tribunal

Date Issued: August 31, 2022

File: SC-2022-002057

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Morgan v. Lansdell*, 2022 BCCRT 972

BETWEEN:

ERIN MORGAN

APPLICANT

AND:

MIKE LANSDELL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, Erin Morgan, claims a \$550 refund from the respondent, Mike Lansdell, for an AirBnb rental that she says “was meant to be provided but was never used”.

2. Mr. Lansdell said Ms. Morgan made an error when booking her dates in February 2022 and Mr. Lansdell understood in February 2022 she had used the property as rented. Later, in March 2022, Ms. Morgan sought a refund. Mr. Lansdell says because he had reserved the property for her in February, Ms. Morgan is not entitled to any refund.
3. The parties are each 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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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 whether Ms. Morgan is entitled to the claimed \$550 refund based on the parties' contractual terms or under the law of mistake or unjust enrichment.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Ms. Morgan must prove her claim on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. Mr. Lansdell rents out a property through Airbnb. Ms. Morgan sought to rent this property, for the purpose of shooting a short film. Due to financial constraints, Ms. Morgan sought and received a discount. For this reason, she did not book through the usual Airbnb process and instead the booking was made through the parties' text messages, which I find formed the parties' agreement. None of this is disputed.
11. This dispute is over what dates Ms. Morgan booked. She says she booked for March 21 to 23, 2022. In contrast, Mr. Lansdell says she booked for February 21 to 23, 2022.

The parties' agreement – dates booked

12. First, Ms. Morgan relies on a "pre-approval" email dated February 10, 2022 that she received through Airbnb. That email said her booking was preapproved for March 1 to 3, 2022. I find nothing turns on this email because it pre-dated the parties' later agreement and because the March 1 to 3 dates are different from the dates she says she later chose.
13. Second, Ms. Morgan relies on a May 25, 2022 witness statement from AC, who says they and Ms. Morgan visited Mr. Lansdell's home on February 11, 2022. AC says they and Ms. Morgan told Mr. Lansdell that they did not have a specific filming date in mind yet but it would be in March. Otherwise, AC appears to restate what Ms. Morgan told her had occurred. I find little turns on AC's statement. As with the pre-

approval email, booking dates can change and as AC noted, they told Mr. Lansdell that a specific date was not yet set. I find it reasonable that Mr. Lansdell did not rely on the March reference in the parties' initial meeting. Rather, I find he was entitled to rely on the parties' later booking arrangements. More on those below.

14. Third, Ms. Morgan relies on her February 19, 2022 e-transfer record of sending Mr. Lansdell the claimed \$550. In it, she made a note "Rental for airbnb, Mike, March 21 to 23, 2022". Mr. Lansdell says the funds were auto-deposited, which I accept as that is shown on the record, and so he did not see that note. I accept his undisputed evidence and so I find nothing turns on the note that Ms. Morgan added to the e-transfer because I find Mr. Lansdell reasonably did not see it.
15. Fourth, Ms. Morgan argues that she told Mr. Lansdell she was buying insurance and would send him a copy as soon as she had it, but that he never asked her for a copy of it. She argues this to show he knew or ought to have known she had booked for March dates, not February, because the February dates passed without his having received the insurance copy. I do not agree. There is no evidence before me Mr. Lansdell required that insurance copy and even if he had, Ms. Morgan only promised to send him a copy of it once she received it. I find nothing turns on the insurance copy.
16. I turn then to the parties' final booking arrangements. The parties' misunderstanding about the dates booked turns primarily on Ms. Morgan's February 13 and 14, 2022 text exchanges (my bold emphasis added):

Ms. Morgan: ... Was just looking at dates and **I'm wondering if around the 22nd to the 24th would work for you?** ...

Mr. Lansdell: The 22nd to 24th of **this month** would work. ...

Ms. Morgan: **That sounds terrific.** I think to be on the safe side I should book from the 21st, to give time to bring in the equipment/set-up, and leave filming for the 22nd-23rd, and checkout the 24th. Does that sound fine with you?

17. On February 15, 2022, Mr. Lansdell texted that it would be \$200 for each night plus a “normal cleaning fee” of \$150, to “prep the house for the next guests”. Ms. Morgan responded that she could only afford 2 nights, “21st to 23rd”. Mr. Lansdell acknowledged this and apologized he could not be more accommodating on the price.
18. On February 19 through 21, 2022, the parties continued to text about the \$550 payment, housekey and access, and number of occupants. At no point in the above February 13 to 21 texts did the parties ever mention the month of March.
19. Mr. Lansdell says he believed Ms. Morgan had used the property February 21 to 23, 2022 and as a routine practice he sent his cleaners to clean it afterwards.
20. In March, Ms. Morgan texted Mr. Lansdell about her booking and that she had the insurance copy. At that point, the parties’ misunderstanding became apparent when Mr. Lansdell responded, “Like a copy from when you used the house last month?” Mr. Lansdell further wrote, “I thought you were already there on the 21st last month” and copied the earlier text exchanges. He added that the property had been emptied in March for renovations. The parties’ relationship then deteriorated when Ms. Morgan repeatedly sought a refund.
21. In short, I find the evidence shows the parties’ contract was for a February 21 to 23, 2022 rental, based on the “this month” language in the texts above. However, I accept that Ms. Morgan intended to book dates in March and misread or misunderstood the “this month” reference.
22. I turn then to the applicable law.

Law of mistake and unjust enrichment

23. As discussed in *Hannigan v. Hannigan*, 2007 BCCA 365, citing *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.* (2003), 2003 ABCA 221, there are 3 types of mistake: common, mutual, and unilateral. Common mistake is where the parties make the same mistake. Mutual mistake occurs when both parties are mistaken, but their

mistakes are different. In a mutual mistake, the parties misunderstand each other and are “not on the same page”. Unilateral mistake is where only one of the parties is operating under a mistake (see paragraph 129 of *Royal Bank of Canada v. G.S. Continuous Gutters Inc.*, 2022 BCSC 366).

24. Here, as noted, I find Ms. Morgan booked Mr. Lansdell’s property for February 21 to 23, 2022. This is because she had confirmed in February that the dates were for “this month”. I find Ms. Morgan’s error in reading and responding to Mr. Lansdell’s text was a unilateral mistake.
25. The law of mistake says that a mistaken party is generally entitled to relief only when the other party knew or should have known about the mistake, remained silent, and ‘snapped’ at the offer. See *256593 BC Ltd. v. 456795 BC Ltd. et al*, 1999 BCCA 137, citing *McMaster University v. Wilchar Construction Ltd.*, 1971 CanLII 594 (ONSC).
26. So, to succeed based on mistake, Ms. Morgan must show that Mr. Lansdell knew or ought to have known that Ms. Morgan misunderstood the booking date error and did nothing to bring it to Ms. Morgan’s attention. Ms. Morgan must show that the mistake would have been obvious to a reasonable person in the circumstances and that taking advantage of it amounts to equitable fraud (see *Royal Bank* at paragraph 129).
27. First, I do not agree with Ms. Morgan that Mr. Lansdell chose to “ignore” her. Based on his texts, I find he was polite and responsive. Second, based on the parties’ text messages summarized above, I find no evidence that Mr. Lansdell took advantage of Ms. Morgan. Rather, I find the evidence clearly shows he reasonably believed Ms. Morgan had rented the property for February 21 to 23, 2022, because she had confirmed in February that her chosen dates were “terrific”. I also note Mr. Lansdell was in touch with her right up to February 21 to give her information about the property. I find the only plausible explanation for his doing so is that he understood she had intended to book the property for February 21 to 23 and further understood that she had occupied it during those dates. Again, given the texts I find this understanding reasonable. I find Ms. Morgan is not entitled to a refund based on the law of mistake.

28. I turn then to unjust enrichment, although Ms. Morgan did not expressly argue it. In essence, Ms. Morgan argues that because she never used the property Mr. Lansdell should not be allowed to keep her payment. I do not agree.
29. The law of unjust enrichment requires an applicant to prove that 1) the respondent was enriched, 2) the applicant suffered a corresponding deprivation, and 3) there is no juristic or valid reason for the enrichment of one at the expense of the other (see *Nouhi v. Pourtaghi*, 2022 BCSC 807).
30. Here, Mr. Lansdell received Ms. Morgan's payment for the booking. However, he also was not able to rent it out to anyone else, given he reasonably believed Ms. Morgan had rented and occupied it. The parties' rental agreement is a valid reason for Mr. Lansdell's retention of the \$550. So, I find Ms. Morgan cannot succeed based on unjust enrichment either. Given the above, and my finding the contract was for the February 21 to 23, 2022 dates, I dismiss Ms. Morgan's claim.
31. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Ms. Morgan was unsuccessful, I dismiss her claim for reimbursement of CRT fees. Mr. Lansdell did not pay fees and neither party claimed dispute-related expenses.

ORDER

32. I dismiss Ms. Morgan's claim and this dispute.

Shelley Lopez, Vice Chair