Civil Resolution Tribunal

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File: SC-2022-001614

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hanbidge v. Giuriato*, 2022 BCCRT 1124

B E T W E E N :

ELIZABETH HANBIDGE

APPLICANT

A N D :

KIERSTEN GIURIATO, NICO GIURIATO, and WHISTLER STAYS VACATION PROPERTY MANAGEMENT INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about a short-term vacation rental.

2. The applicant, Elizabeth Hanbidge, booked a holiday stay for February 21 to March 8, 2022 at a vacation property rented out by the respondents, Kiersten Giuriato and Nico Giuriato. Mr. Giuriato is an owner of the respondent corporation, Whistler Stays

Vacation Property Management Inc. (Whistler Stays). It is not clear which respondent or respondents contracted with Ms. Hanbidge for the rental, as discussed below.

3. Ms. Hanbidge says she was disturbed by too much noise during her stay, and so she advised the respondents that she had arranged other accommodation as of March 1, 2022. Ms. Hanbidge says the respondents assured her the unit would nevertheless remain for her enjoyment until the end of her paid rental period on March 8. However, Ms. Hanbidge says when she entered the unit on March 2, she found the bed linens and towels removed and the unit in an uninhabitable state. Ms. Hanbidge says the respondents also disposed of food she had purchased. Ms. Hanbidge says she is entitled to a 7-night refund totalling $6,253. Ms. Hanbidge expressly reduced her claim to $5,000, the small claims monetary limit in the Civil Resolution Tribunal (CRT).

4. The respondents say that because Ms. Hanbidge confirmed she was leaving, they went to check on the property for safety and sanitary reasons. They say Ms. Hanbidge had removed all her belongings, other than some leftover food, so they assumed she had left with no intention of returning and they started to clean the unit. The respondents say that when Ms. Hanbidge returned, they offered to re-make the beds and confirmed she could continue using the property. The respondents say they do not owe Ms. Hanbidge any refund.

5. Ms. Hanbidge is self-represented. Mr. and Mrs. Giuriato are also self-represented, and Mr. Giuriato represents Whistler Stays.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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. 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.

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.

ISSUE

10. The issue in this dispute is whether Ms. Hanbidge is entitled to a $5,000 refund of her holiday booking fee paid for the respondents' rental unit.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Hanbidge must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

12. At the outset, I note that the evidence is unclear and the parties did not explain the role of each respondent in this dispute. Specifically, it is unclear which respondent or respondents contracted with Ms. Hanbidge. That is, I find I am unable to determine on the evidence before me whether the Giuriatos contracted with Ms. Hanbidge personally or whether they contracted with Ms. Hanbidge as Whistler Stays'

representatives. As I have found below that Ms. Hanbidge failed to prove her claims, I find nothing turns on which respondent or respondents would ultimately be liable for a refund. So, I have simply referred to the respondents collectively as the contracting parties and the property's owners in this decision.

13. It is undisputed that Ms. Hanbidge found the respondents' rental unit advertised on the VRBO (Vacation Rentals by Owners) website, and that the parties communicated largely through a message function on the VRBO platform. On January 2, 2022, Ms. Hanbidge reserved the respondents' unit for a stay between February 21 and March 8, 2022.

14. Ms. Hanbidge paid for the booking through the VRBO website. The charges included $708.36 per night for 15 nights ($10,625.40), a $160 cleaning fee, a $889 service fee, and $1,725.68 in tax. It is undisputed that Ms. Hanbidge agreed to VRBO's cancellation policy, which provided a 50% refund (minus the service fee) for cancellations requested by January 22, 2022, and no refunds after that date.

15. Ms. Hanbidge checked into the unit as scheduled on February 21, 2022. It is undisputed that loud neighbours disrupted Ms. Hanbidge's sleep in the early morning hours of both February 25 and 26. At the respondents' suggestion, Ms. Hanbidge called security on February 26, but the security company advised her it no longer dealt with that complex due to previous non-payment.

16. It is undisputed that the respondents refunded Ms. Hanbidge $500 "as a token of apology" on February 26. The respondents also advised Ms. Hanbidge that they had contacted the security company to arrange direct billing and ensure security would respond to any future noise complaints.

17. Ms. Hanbidge responded that she had decided to leave early and would be checking out on March 1 because the unit was too noisy. Mrs. Giuriato confirmed that she had spoken with the offending neighbours directly, and she reported the noise issue to the rental booking platform the neighbours had used. Mrs. Giuriato also advised that the neighbours were scheduled to check out on March 1.

18. On February 28, Ms. Hanbidge advised the respondents that even though the neighbours had quieted, she had arranged alternative accommodation as of March 1. Mrs. Giuriato responded that Ms. Hanbidge was still welcome to enjoy the rental unit for the duration of her booking. Given this offer, Ms. Hanbidge says she decided to continue using the unit occasionally during the day, particularly the unit's hot tub, and so she left some food in the fridge for later. I find there is no evidence that Ms. Hanbidge advised the respondents of her intention to continue using the unit.

19. It is undisputed that Ms. Hanbidge returned to the unit on March 2 and found the respondents had stripped the bed linens, removed towels, and emptied the fridge. Ms. Hanbidge sent the respondents several messages that evening requesting a 7-night refund, given the respondents had "retaken" the unit and Ms. Hanbidge was clearly no longer welcome. Mrs. Giuriato responded that she only entered the unit because Ms. Hanbidge said she was leaving and removed all her belongings. Mrs. Giuriato confirmed that Ms. Hanbidge was still welcome to stay and offered to re-make the beds. However, it is undisputed that the respondents did not offer to provide any additional refund.

20. Ms. Hanbidge argues that the respondents breached the parties' contract by entering the rental unit without her permission during her rental period and leaving it "uninhabitable". I note that Ms. Hanbidge does not argue she is entitled to the claimed refund because the noise issues prompted her to rent other accommodation, and her claim is restricted to the respondents' alleged breach for improperly entering the unit. As Ms. Hanbidge is claiming a full refund from the time of the alleged breach, I find she is saying the breach was a fundamental breach.

21. A fundamental breach is where a party fails to fulfill a primary obligation in a contract, in a way that deprives the other party of substantially the whole benefit of the contract. See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC). Put another way, a fundamental breach is one that destroys the whole purpose of the contract and makes further performance of the contract impossible. See *Bhullar v. Dhanani*, 2008 BCSC 1202. If there is a fundamental breach, the wronged party may

terminate the contract immediately, and does not have to perform any more terms of the contract. See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23.

22. It is undisputed that there was no explicit contractual term that prevented the respondents from entering the unit during Ms. Hanbidge's rental period. So, I find Ms. Hanbidge argues it was an implied term of their contract that the respondents would not enter the unit during the rental period without Ms. Hanbidge's prior consent.

23. Implied terms are contractual terms that the parties did not expressly consider, discuss, or write down. The court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Such terms are founded on a common presumed intention of the parties. In other words, an implied term must be something that both parties would have considered obvious when they entered into the contract. See *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216, at paragraphs 25 to 32.

24. Applying this legal test, I find the parties implicitly agreed that Ms. Hanbidge would generally have sole use of the unit during her rental period. That is, I find it was an implied term of the parties' contract that the respondents would not unreasonably enter the unit during Ms. Hanbidge's rental without her consent. However, I find Ms. Hanbidge has not established that the respondents breached this implied term.

25. I find the respondents reasonably went to inspect the unit for safety and sanitary reasons on March 2, 2021, as Ms. Hanbidge had given written notice that she was leaving early and had not indicated that she would continue using the unit. I accept the respondents' evidence that they knocked, called out, and confirmed that Ms. Hanbidge's personal belongings and luggage were gone before they entered the unit and began cleaning it. While it is undisputed that Ms. Hanbidge left behind a small amount of "leftovers" in the fridge, I find that was insufficient to reasonably alert the respondents that Ms. Hanbidge might return and continue to use the unit.

26. Under the circumstances, I find the respondents reasonably believed Ms. Hanbidge had no intention of returning to the rental unit after March 1, and so they did not need Ms. Hanbidge's consent to enter the unit. Therefore, I find no breach of contract.

27. I note that even if I had found the respondents breached the parties' contract by unreasonably entering the unit on March 2, 2022, I would not have found it was a fundamental breach. While the respondents undisputedly removed the dirty bed linens and towels from the unit for cleaning, the evidence shows that Mrs. Giuriato told Ms. Hanbidge there were extra clean linens and towels in the closet, which Ms. Hanbidge does not dispute. The photos in evidence also show some couch cushions askew and a few kitchen and laundry items out of place, but I find nothing to suggest the unit was unreasonably untidy or in an uninhabitable condition, as alleged.

28. Overall, I find the respondents' actions in entering and starting to clean the unit did not deprive Ms. Hanbidge of substantially the whole benefit of the contract. Further, once Ms. Hanbidge advised the respondents that she had planned to continue using the unit, the respondents confirmed the door code remained active for her, and they offered to re-make the beds and put out fresh towels. I find there is no reason that Ms. Hanbidge could not have continued to use the unit until the end of her rental period. In the absence of a fundamental breach, I find Ms. Hanbidge is not entitled to a refund of the rental fees for the period after the respondents entered the unit.

29. I also note that for a breach of contract that is not a fundamental breach, a wronged party may claim damages, which are intended to put the innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General),* 2015 BCCA 319. However, even if Ms. Hanbidge had established that the respondents unreasonably entered the unit, I find she has not proven any damages.

30. As noted, Ms. Hanbidge had already found other accommodation for the remainder of her rental period. I find the unmade beds in the respondents' unit were at most a minor annoyance that is not compensable. Ms. Hanbidge did not provide any details about the discarded food or its value, but it was undisputedly "leftovers", so I am

satisfied it was of little to no value, and I would not order any compensation for it. Overall, I find Ms. Hanbidge continued to have full use of the respondents' rental unit as provided under the parties' agreement, and I find the respondents' entry for a short time while Ms. Hanbidge was not present did not impact the parties' contract to the extent that any damages would be payable.

31. For all these reasons, I dismiss Ms. Hanbidge's claims.

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. As Ms. Hanbidge was unsuccessful, I dismiss her claim for CRT fees. The respondents did not pay any fees and no party claimed dispute-related expenses.

ORDER

33. I dismiss Ms. Hanbidge's claims, and this dispute.

Kristin Gardner, Tribunal Member