



Civil Resolution Tribunal

Date Issued: November 2, 2022

File: SC-2022-001268

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mann v. Dezfulli*, 2022 BCCRT 1204

BETWEEN:

SUCHA MANN

APPLICANT

AND:

ALI NADDAF DEZFULLI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about an alleged agreement not to pursue a Residential Tenancy Branch (RTB) complaint.
2. The applicant, Sucha Mann, is the former landlord to the respondent, Ali Naddaff Dezfulli. Mr. Mann says Mr. Dezfulli did not withdraw his Residential Tenancy Branch

(RTB) claim, as the parties agreed to. Mr. Mann claims \$1,500, which is the amount he says the RTB ordered him to pay Mr. Dezfulli.

3. Mr. Dezfulli says he could not agree to waive his legal rights. He also says he only signed the agreement so Mr. Mann would refund him his pet and damage deposit. I infer Mr. Dezfulli argues the agreement is not binding on him and asks me to dismiss this dispute.
4. Both parties are self-represented.

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. In some respects, both parties call into question the credibility, or truthfulness, of the other. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required in every case where credibility is at issue. Bearing in mind the CRT's mandate, I find that an oral hearing is not in the interests of justice and fairness. I find I am able to assess and weigh the documentary evidence and submissions before me.
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.

PRELIMINARY ISSUES

Jurisdiction

9. In a June 7, 2022 preliminary decision, I considered whether Mr. Mann's dispute had already been resolved, or would be more appropriately resolved, by the RTB. On a preliminary basis, found this dispute was essentially a breach of contract claim, rather than a claim about the parties' respective obligations as landlord and tenant. So, I found Mr. Mann's claim was not more appropriate for the RTB. I adopt that reasoning here. I find the CRT has jurisdiction (legal authority) to decide this dispute under its small claims authority.

Late Evidence

10. Mr. Mann submitted his copy of the parties' agreement, and a witness statement, as evidence after the deadline to do so had passed. I accept his explanation that he tried to upload the evidence within the time frame, but he did not succeed. This is because it appears Mr. Mann created the titles for the evidence in the CRT portal but did not upload any documents.
11. In any event, CRT staff forwarded Mr. Mann's late evidence to Mr. Dezfulli, who responded. So, I find Mr. Dezfulli was not prejudiced by the lateness of the evidence. Keeping in mind the CRT's mandate for flexibility and efficiency, I allow the late evidence and have considered it in my analysis below.

ISSUES

12. The issues in this dispute are:
 - a. Do the parties have a binding agreement?

- b. If so, did Mr. Dezfulli breach it?
- c. If so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one the applicant, Mr. Mann, must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and weighed the evidence, but only refer to that which is relevant to explain my decision.
14. Mr. Dezfulli submitted a photo of a signed “Moving Notice” dated August 1, 2021. It asks Mr. Dezfulli and his wife to vacate the suite on August 31, 2021 as it will be occupied in the future. The note appears to be signed by Mr. Mann, although it is not entirely clear.
15. The parties met at a coffee shop on October 18, 2021, after Mr. Dezfulli had vacated the suite. Mr. Mann paid Mr. Dezfulli \$1,300. They both signed a typewritten agreement, discussed further below. None of this is disputed.
16. In the signed agreement, both parties agree not to pursue the other in small claims court or “BC tenancy branch”, which I find likely means the RTB. Specifically, Mr. Mann agrees not to pursue Mr. Dezfulli for cleaning expenses, property damage or any rental loss for September to December. In turn, Mr. Dezfulli agrees not to claim a damage or pet deposit refund, or to continue any other kind of residential tenancy dispute in the future.
17. Section 58 of the *Residential Tenancy Act* (RTA) says that the RTB has exclusive jurisdiction over disputes between landlords and tenants, with some exceptions. The RTA addresses cleaning expenses, property damage, rental loss, and the return of damage and pet deposits. I find these are the issues the parties specifically agreed not to pursue in their October 28, 2021 agreement.

18. Section 5(1) of the RTA specifically says that landlords and tenants may not avoid or contract out of the RTA. I find that is the exact intent of the October 28, 2021 agreement. So, I find the agreement is not valid and not binding on either party.
19. With that, I cannot find Mr. Dezfulli breached the agreement. So, I dismiss Mr. Mann's claim for breach of contract.
20. I have considered whether Mr. Dezfulli must reimburse Mr. Mann the \$1,300 he received on October 28, 2021. I find he does not.
21. Mr. Mann says the payment was 1 months' rent paid as compensation for ending the tenancy. Mr. Dezfulli claims it was a refund of his pet and damage deposit, which Mr. Mann denies. There is no evidence about the parties' rental agreement before me to support one version or the other. In any event, whichever version is correct, I find the \$1,300 payment was intended as part of Mr. Mann's obligation to fulfill his obligations under the RTA. As noted above, only the RTB has jurisdiction to consider those matters. So, I make no order about the return of the \$1,300.
22. 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 Mr. Mann was unsuccessful in his claim, I find he is not entitled to reimbursement of his paid CRT fees. As the successful respondent Mr. Dezfulli paid no CRT fees and claimed no dispute-related expenses.

ORDER

23. I dismiss Mr. Mann's claim and this dispute.

Sherelle Goodwin, Tribunal Member