



Civil Resolution Tribunal

Date Issued: February 6, 2023

File: SC-2022-002802

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rao v. Bayview Strata Service Inc.*, 2023 BCCRT 109

BETWEEN:

SHILPI RAO and SANAL KUMAR SUKUMARAN

APPLICANTS

AND:

BAYVIEW STRATA SERVICE INC. (Doing Business As Bayview
Rental and Strata Services)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicants, Shilpi Rao and Sanal Kumar Sukumaran, hired the respondent, Bayview Strata Service Inc. (Doing Business As Bayview Rental and Strata Services) (Bayview), to manage a rental property. The applicants say that Bayview breached their contract by providing substandard service. They claim \$5,000, broken down as

follows: 1) \$3,300 for money paid to a tenant due to Bayview's alleged breach, 2) \$1,500 for lost rental income, and 3) \$290 as reimbursement for a combination of fees or changing locks and obtaining legal advice. As these claims total \$5,090, I find the applicants waive their entitlement to any amounts over the Civil Resolution Tribunal's (CRT) small claims limit of \$5,000.

2. Bayview denies breaching the contract or any other wrongdoing.
3. Ms. Rao represents the applicants. An agent represents Bayview.
4. For the reasons that follow, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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 "they said, they 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.

ISSUE

9. The issue in this dispute is whether Bayview breached the parties' contract and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The following facts are undisputed. The applicants own a residential rental property. The parties signed a contract dated February 25, 2021. In it, the applicants agreed to hire Bayview as its rental property manager and agent. At the time, the property's 2 suites were vacant.
12. After signing the contract, Bayview found a tenant for the upstairs suite. It sent the tenant, DP, the tenancy agreement. The tenancy was for a fixed term of 12 months commencing on April 1, 2021, with monthly rent of \$2,200. A signature with timestamp shows DP electronically signed the agreement on March 20, 2021. According to the timestamp, Bayview's employee, CL, signed it on March 22, 2021.

13. Around this time, Bayview advised the applicants they had found a tenant and would charge \$2,200 monthly for rent. Prior to this, Bayview and the applicants had not agreed on an exact rent figure for the upstairs suite. On March 21, 2021, Ms. Rao phoned CL. She complained that the rent charged was too low and below the market rate. She says that CL advised her that DP had already signed the tenancy agreement.
14. Also on March 21, 2021, Ms. Rao emailed Bayview and repeated her complaints about the rent charged. She said the applicants intended to move into the upstairs suite in May or June 2022, and asked CL to advise when they should tell DP to vacate. Ms. Rao also asked Bayview to refrain from renting out the downstairs suite before checking with her first.
15. Bayview and Ms. Rao exchanged more emails in March 2021. They agreed the parties would end the contract in the near future, and Bayview would reduce its fee to \$1,000. They documented this in a signed March 26, 2021 termination agreement. As shown in the emails, Bayview also agreed to speak to DP to determine if they would willingly end the tenancy. A copy of DP's email shows they requested \$3,200 as compensation. It is undisputed that the applicants paid this.
16. Bayview's March 26, 2021 email shows the parties ended their agreement on that date. As noted in the email, Bayview returned DP's security deposit of \$1,100, less its fee of \$1,000, for a total of \$100.

Issue #1. Did Bayview breach the parties' contract?

17. Section 2.2 of the contract said that Bayview agreed to manage the applicant's property as directed and authorized from time to time by the applicants. Section 2.3 also said that Bayview could enter rental agreements with tenants as agent for the applicants.
18. The applicants say that, given their phone and email complaints on March 21, 2021, CL should not have signed the tenancy agreement on March 22, 2021. Ultimately, I find nothing turns on when CL signed the agreement for the following reasons.

19. A binding contract requires one party to provide an offer and the other party to accept it. I find that Bayview and DP already had a binding contract by the evening of March 20, 2021. This is because, by that time, Bayview had already sent its written offer and DP had accepted it by signing it. So, I find that nothing turns on the fact that CL signed the agreement as well on March 22, 2021.
20. The applicants say Bayview breached the parties' agreement by renting out the rental property at the minimum rental rate specified in the contract and not the market rate. Under Schedule C, the applicants filled out the rental price range by specifying a minimum of \$3,700. I find this applied to the sum of rent for both suites. The applicants left the upper range blank. The remainder of the contract is essentially silent on the rent. Further, the applicants provided an ideal occupancy date of April 1, 2021. Given the relatively tight timeline, and the lack of any explicit terms about it, I find Bayview was not obligated to charge the market rate for rent.
21. The applicants also say Bayview should have presented them with offers before signing the tenancy agreement with DP. However, the contract's wording does not require this. As noted above, section 2.3 allowed Bayview to enter rental agreements. So, I find the contract allowed Bayview to enter into the tenancy agreement with DP without the applicants' prior approval.
22. The applicants say Bayview "tricked" them into terminating the tenancy agreement with DP. I disagree because, as noted earlier, Ms. Rao first raised the issue of terminating the tenancy agreement in her March 21, 2021 email to Bayview. She wrote that the applicants would be moving into the upstairs suite in May or June 2022. So, I find Bayview was not responsible for this.
23. Next, under Schedule C of the contract, the applicants indicated that "only small size pets are okay". The applicants say they spoke to DP on March 26, 2021, and DP said they had a "large husky dog". They say Bayview breached the agreement because it entered a tenancy agreement with DP, and the husky was not a small pet. However, there is no evidence from DP to verify the applicants' phone call with DP. So, I find this submission is unsupported by evidence.

24. Finally, the applicants say Bayview breached the contract by paying its fee from DP's security deposit. I find Bayview could do so under section 14 of the parties' agreement. It says that upon termination of the agreement, the applicants authorized Bayview to deduct money owing to it from any funds it held in trust for the applicants.
25. For all those reasons, I find Bayview did not breach the contract.
26. 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 dismiss the applicants' claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.

ORDER

27. I dismiss the applicants' claims and this dispute.

David Jiang, Tribunal Member