Civil Resolution Tribunal

Date Issued: March 15, 2023

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *East Kootenay Realty Ltd. v. Daniels*, 2023 BCCRT 214

B E T W E E N :

EAST KOOTENAY REALTY LTD.

APPLICANT

A N D :

FRANCIS MICHAEL DANIELS

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. The applicant, East Kootenay Realty Ltd. (EKR), says it did certain property management work for the respondent, Francis Michael Daniels, but has not been paid. In particular, EKR says it has not been paid for removing Mr. Daniels' tenant's belongings from Mr. Daniels' property after the tenant passed away, cleaning the property, and storing the tenant's belongings. EKR says Mr. Daniels owes it over

$5,000 but limits its claim to the Civil Resolution Tribunal's (CRT) $5,000 limit for small claims disputes.

2. Mr. Daniels says that CA, one of EKR's property managers, told him that EKR was legally required to do this work itself and that the costs would be paid by the tenant's estate. Mr. Daniels further says he did not give EKR permission to incur these costs on his behalf. So, Mr. Daniels says he owes EKR nothing.

3. EKR is represented by its president. Mr. Daniels is represented by a family member who is not a lawyer.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. 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.

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 in this dispute is whether Mr. Daniels owes EKR $5,000 for removing and storing the tenant's belongings and cleaning the property.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, EKR as the applicant must prove its claims on a balance of probabilities (meaning "more likely than not"). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. EKR did not provide any reply submissions despite having the opportunity to do so.

10. The evidence shows as follows. On July 21, 2010, Mr. Daniels entered into a property management contract (contract) with Highland Property Management Ltd. (Highland). On July 31, 2013, the parties agreed to assign Highland's obligations under the contract to EKR.

11. Clause B3 of the contract said EKR would make disbursements on Mr. Daniels' behalf to cover the day to day costs of running the property such as power, electricity, etc. "and any other costs pertaining to the [property]…as directed by the owner". Under clause B7, EKR's duties included making and servicing repairs and alterations. Clause B7 further stated EKR was required to secure Mr. Daniels' prior approval "on all expenditures in excess of one hundred dollars, ($100.00) for any one item, except monthly or recurring operation charges and/or emergency repairs in excess of the maximum…". More on this below.

12. In February 2022, a tenant resided at the property managed by EKR under the contract. On February 5, 2022, Mr. Daniels and his wife emailed CA and said they

had decided to retire and move to the property on May 1. They asked EKR to give the tenant notice to move out by April 30.

13. EKR issued the notice at some point in February. On April 23, the Daniels emailed CA and said they had learned the tenant had discontinued the hydro service and inquired about whether the tenant had moved out. They also asked if the house had been cleaned, noting that it was “pretty filthy” when they visited the property with CA on April 16.

14. On April 27, CA informed the Daniels that the tenant had passed away. CA said that EKR would do its best to remove what was left in the house and the rest of the property. The same day, the Daniels wrote back saying they had some questions and asked to speak with CA the following evening. The Daniels confirmed they intended to start moving in on May 8 and said they needed to have the house cleaned before they could proceed. They also thanked CA for “getting the stuff out of the house” for them.

15. Mr. Daniels says that after receiving CA’s April 27 email saying the tenant had passed away, he and his wife had a telephone call with CA the following day. Mr. Daniels says that during this call, he inquired with CA about who was going to pay for all of the work to clean out the property because the Daniels could not afford to hire someone to do it. Mr. Daniels says CA told the Daniels that EKR would get payment from the tenant’s estate. Mr. Daniels says CA told him EKR “had to do this as it was the law under the BC Tenancy Act and they were liable”. By “they”, I infer Mr. Daniels means CA told him EKR was liable. Mr. Daniels says he told CA that he was going to be bringing a large truck down and would be happy to deal with the tenant’s belongings himself. However, Mr. Daniels says CA was adamant that it was EKR’s sole responsibility to attend to this matter and repeatedly told him that he and his wife were not allowed on the property until EKR completed the work.

16. EKR does not address Mr. Daniels’ account of the April 28 conversation with CA in its submissions. There is also no witness statement in evidence from CA contradicting Mr. Daniels’ evidence. Further, CA’s May 6 email mentioned below refers to a phone

call they had with the Daniels "the previous week". So, I find it likely the April 28 call took place. Given the lack of any evidence saying otherwise, I accept Mr. Daniels' uncontroverted evidence about the April 28 phone call.

17. The next recorded correspondence between the parties is CA's May 6 email. In this email, CA said as per their emails and phone call with the Daniels the previous week, EKR had done several things to facilitate the Daniels' vacant possession. CA noted that at this point, they did not know if the tenant had any family, a will, or an executor for the estate. As a result, CA said EKR had done the following "as required by the tenancy rules of BC":
    a. Engaged Williams Moving and Storage to move and store the tenant's belongings for at least 60 days "as required by the tenancy branch",
    b. Removed the tenant's derelict vehicles and kept them at EKR's storage compound for storage for at least 60 days,
    c. Removed and donated any miscellaneous items left behind, and
    d. Had EKR's maintenance staff clean the property, inside and out.

18. CA ended the email saying that they would touch base once they received the invoices and expenses for the completed work. The Daniels say when they received this email, they believed it was just an update on the process "and didn't think much of it". The same day, the Daniels responded, thanking CA. On May 17, CL, EKR's administrative assistant, emailed various invoices for the work to the Daniels and asked them to make payment. Mr. Daniels undisputedly has not paid any amount to EKR for this work.

19. Mr. Daniels says that after receiving the invoices from EKR on May 17, he and his wife called EKR almost immediately. Mr. Daniels says when he and his wife asked CA about why he was being billed for the work when CA had told them that EKR would get payment from the tenant's estate, CA said that they could not find any contacts for the tenant's estate and as a result, EKR was now billing Mr. Daniels.

20. EKR's account of the May 17 phone call differs. In its submissions, EKR says Mr. Daniels' wife called CA after receiving the invoices and said that the Daniels were not going to pay and that EKR would need to get payment from the tenant's estate. As mentioned above, there is no witness statement from CA in evidence. So, on balance, I prefer Mr. Daniels' evidence about the May 17 conversation over EKR's.

21. Is Mr. Daniels responsible for the claimed cleaning and storage costs? EKR says that it completed the work as Mr. Daniels' agent, at his request, and is entitled to be paid for that work and the expenses it incurred. Invoices in evidence show EKR incurred the following expenses:
    a. $2,397.50 for cleaning the property,
    b. $1,322.44 for Williams Moving & Storage to pack, load, and unload the tenant's belongings at storage,
    c. $311.85 for Van Horne Towing to tow the tenant's vehicles,
    d. $154 for disposing of items at the landfill, and
    e. $1,448.70 for storage fees from June to October 2022.

22. EKR relies on the emails referred to above and an alleged telephone call CA had with Mr. Daniels sometime between May 4 and May 6 in support of its allegation that Mr. Daniels requested EKR to do this work. In its submissions, EKR says during this call, Mr. Daniels "made it clear that the house needed to be clear of all contents". In a May 19 email to EKR's lawyer, CA similarly stated that Mr. Daniels told them on a May 6 phone call that the house needed to be emptied and cleaned, and the detached garage and back parking area needed to be cleared out.

23. As noted above, clause B3 of the contract allows EKR to incur disbursements for day to day tasks relating to the property, but I find Mr. Daniels' direction was required before incurring other costs, such as those EKR claims for here. Mr. Daniels also refers to clause B7 mentioned above and says EKR was required to obtain his prior approval before incurring expenses over $100, which it did not do. Given that clause

B7 starts by referring to EKR's duty to make repairs and alterations, I considered whether the $100 maximum limit applies only to repair and alteration expenses. However, given the wording of the rest of clause B7, I find EKR was required to obtain prior approval from Mr. Daniels before incurring any expenses over $100 (except monthly or recurring operation charges and/or emergency repairs), not just those related to repairs and alterations.

24. I find the evidence shows the Daniels were appreciative of the work EKR was doing to clean out the property. Mr. Daniels says that he and his wife would have done this work themselves but for CA telling them during the April 28 phone call that they were not allowed on their property until EKR completed the work itself.

25. On balance, I find the emails in evidence do not prove Mr. Daniels gave EKR clear direction to do this work and incur the claimed expenses on his behalf. In particular, I find the April 27 email does not contain a request but instead a statement that the Daniels needed the house cleaned out before they could move in. It is not clear from this email who the Daniels expected to complete this work.

26. Further, while Mr. Daniels does not dispute that the May 6 conversation with CA took place, the evidence shows that most, if not all, of the work EKR claims for had already been completed by this date. So, I do not find any statements Mr. Daniels may have made to CA on May 6 can be considered a direction for CA to incur disbursements on Mr. Daniels' behalf as stipulated in clause B3 of the contract since the work had likely already been done. Based on Mr. Daniels' uncontroverted account of the April 28 phone call with CA, I find EKR likely completed the work based on CA's belief that EKR was legally required to do so under the *Residential Tenancy Act*, not because Mr. Daniels had requested the work to be done.

27. In addition, I find there is no evidence before me that EKR ever informed Mr. Daniels before incurring the expenses how much it would cost for EKR to remove the tenant's belongings, store them, and clean the property. So, I find EKR did not obtain Mr. Daniels' approval prior to incurring the claimed expenses as required under clause

B7. For these reasons, I find EKR is not entitled to recover the claimed amounts from Mr. Daniels.

28. 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. Since EKR was unsuccessful, I dismiss its claim for paid CRT fees. Mr. Daniels did not pay any CRT fees and neither party claims any dispute-related expenses, so I order no reimbursement.

ORDER

29. I dismiss EKR's claims and this dispute.

Nav Shukla, Tribunal Member