Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Romashin v. Hay*, 2023 BCCRT 511

B E T W E E N :

STANISLAV ROMASHIN

APPLICANT

A N D :

KRISTOPHER HAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This dispute is about a damage deposit on a vacation home rental. The applicant, Stanislav Romashin, rented a vacation home for 4 nights from the respondent, Kristopher Hay. The booking price included a $2,000 damage deposit.

2. The respondent did not refund the applicant's damage deposit. He says the applicant and their guests caused more than $2,000 in property damage and additional cleaning costs. The respondent says he was entitled to keep the damage deposit and the claim should be dismissed.

3. The applicant says they left the rental home in "impeccable condition." They say the respondent kept the damage deposit in retaliation for the applicant and their guests accidentally drinking a bottle of the respondent's wine.

4. Each party is 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, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.

Counterclaim

9. The respondent did not make a counterclaim against the applicant. In submissions, the respondent said he was advised that he could make a counterclaim once the matter was concluded, and indicated that he intended to do so. CRTA section 7(2) says that upon being served with a Dispute Notice, a person must make a response in accordance with the rules. CRT rule 3.2 says a respondent can make a counterclaim against an applicant by providing the CRT with a completed application form and paying the required fee within 30 days. At my request, CRT staff confirmed that the respondent was advised during facilitation that he could file a counterclaim at that time. Based on this and the clear wording in rule 3.2, I find the respondent was aware of how to make a counterclaim. I therefore concluded that it was not necessary to give him another opportunity to make one before adjudicating this dispute. I make no finding about the respondent's right to make a claim against the applicant in the future.

ISSUE

10. The issue in this dispute is whether the respondent was entitled to withhold some or all of the applicant's $2,000 deposit for property damage and other expenses.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant must prove their claims. However, it is undisputed that the applicant paid the respondent a $2,000 damage deposit. A damage deposit is presumptively refundable in the absence of damage or other allowable deductions. This means that the respondent must prove the damage and related expenses on a balance of probabilities, meaning more likely than not (see *Griffin Holding Corporation v. Raydon Rentals Ltd.*, 2016 BCSC 2013, at paragraph 28) While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. The parties' agreement is documented in a February 1, 2022 "short term rental agreement". The renting party was described as 9 adults, but the applicant was the only named person. The applicant booked the vacation home for September 2 to 6, 2022. The rent was $975 per night. There was a $300 cleaning fee. The agreement said the $2,000 security deposit would be refunded within 30 days of the rental period ending, less any "deficiencies, damages, fines or fees to be incurred via [the respondent.]" As noted, the respondent retained the entire $2,000 deposit.

13. The parties' text messages and emails show that the respondent was upset about 3 things. The first was that the applicant's party undisputedly consumed a bottle of sparkling wine that was a gift to the respondent. The wine had a label that read "pairs well with becoming an Auntie & Uncle". The second thing was that the applicant's party undisputedly had a fire in the respondent's fire pit during a fire ban. The respondent said this resulted in his having to remove the fire pit to avoid paying a $1,200 fine and facing possible property insurance consequences. The third thing the respondent was upset about was property damage and additional cleaning required.

14. As for property damage, the applicant generally disputes causing any property damage and says they left the vacation home in impeccable condition. The applicant says the respondent's evidence about property damage is "confusing and presumptive," and "lacking convincing details." I do not agree that the respondent's evidence lacks convincing details. He provides a statement from his cleaner, AS, who

attended the home 3 days after the applicant's stay. The respondent says the home was not rented to anyone else in that period. AS's statement is consistent with photographs documenting the damage and with the respondent's messages to the applicant on September 12 advising about the damage. For these reasons, I prefer the respondent's evidence over the applicant's blanket denial on behalf of their 9-person group. I find the applicant caused the property damage described below.

15. That said, the respondent must establish the amount he was entitled to deduct form the deposit for each damaged item or loss.

Cabinets

16. The respondent says when his cleaners attended, they told him that the main cutlery drawer had ¼ inch of deep red liquid later discovered to be beet root juice. The liquid was dripping to the cabinet below. Beet root juice was also found in a cup resting on a pull-out drawer in the pantry, which the respondent's cleaner opened, causing more liquid to spill. In a statement, AS said they tried to clean the all the liquid, but it stained the cabinets. The applicant does not specifically deny that someone in the rental party left a cup of beet root juice on a pull-out drawer. I find they are responsible for the resulting damage because I find leaving a cup containing a staining liquid on a sliding drawer or shelf obviously falls below the standard of care of a reasonably prudent vacation home renter.

17. Photos confirm red or purple staining on 1 pantry cabinet front and 3 or 4 drawer fronts. I accept the respondent's evidence that he and his cleaner were unable to remove the stains.

18. The respondent claims $1,238 for the 2 cabinets, supported by a pdf from Ikea's website. He says he cannot buy the cabinet fronts, and painting over the stains would require repainting all the cabinets, which would be more expensive than replacing the 2 damaged cabinets. The applicant does not challenge this evidence, so I accept it. The respondent also claims $369.15 to install the cabinets, although the quote he provides is for $250, and he does not explain the difference. I find the respondent

was entitled to retain from the deposit $1,238 for the cabinets and $250 for installation, for a total of $1,488.

Dining room table

19. The dining room table has a small white cloudy mark, as shown in a photo. The respondent says it was previously in immaculate condition and he suspects the white mark was caused by a hot pot being placed on the table. He was able to remove some of the mark. The respondent claims $848, the price he paid for the table in 2020. I accept that the table was only 2 years old and in very good condition. However, I find the measure of damages is not the table's replacement cost. Given how small the mark is, I find the table is still functional. The table is designed to have a vintage, distressed look, which minimizes the visual impact of the mark. Taking all this into account, on a judgment basis I find the respondent was entitled to retain $50 for the table damage.

Dresser

20. The respondent says a bedroom dresser was stained with cup-rings and scratched by what he says looks like an attempt to scrub the surface to remove stains. Photos confirm this, and I agree the dresser top needs to be repainted. On a judgment basis, I find the respondent was entitled to retain from the deposit $50 for repainting the dresser, including materials and labour.

Oscillating Fan

21. The respondent says all 3 knobs were broken, the front grill was bent and the side was crushed. Based on the photos, I accept that the fan is no longer in usable condition after the applicant's stay. The respondent says they were entitled to retain $105.78 but provided a Walmart listing for $60. I find $60 is appropriate.

Additional cleaning costs

22. The respondent says they were entitled to retain $200 for additional cleaning costs. In AS's statement, they said additional cleaning was required, which I accept. AS said

they charged 2 extra hours but did not say what the hourly rate was. There is no invoice from AS or evidence of AS's hourly rate. I do not find $100 per hour reasonable. On a judgment basis, I allow $60 for additional cleaning.

Wine consumed

23. As noted, it is undisputed that the applicant consumed the respondent's bottle of sparkling wine. I accept that the wine had sentimental value to the respondent, as shown in his text messages to the applicant upon the discovery. The general principle is that sentimental value cannot be considered because doing so would make assessment of damages too imprecise and uncertain (see *Smith v. British Columbia*, 2011 BCSC 298). As the respondent gave no evidence about the type of wine or its value, on a judgment basis I allow a $20 deduction for the wine.

Fire

24. As noted, the applicant undisputedly had a fire in the respondent's outdoor fire pit during a fire ban. The respondent says his neighbours reported the fire. He says the fire department gave him 2 options: pay a $1,200 fine or remove the fire pit. The respondent says as a concession to the neighbours and the fire department, and to avoid fines, he removed the fire pit permanently. He says he should be compensated $1,200 for the loss of use of his fire pit going forward.

25. The respondent provided no documentary evidence from any fire department about fines or a request or agreement to remove the fire pit. The respondent also provided no evidence confirming he removed the fire pit, such as before and after photos, or a statement from the neighbour, or a new vacation home listing without a fire pit. I find the respondent has not proven the loss of the fire pit, so I find the respondent was not entitled to retain anything from the damage deposit for the fire pit.

Summary, interest, CRT fees and expenses

26. I find the respondent was entitled to deduct a total of $1,728 from the $2,000 damage deposit:

a. $1,488 for the kitchen cabinet damage,

b. $50 for the table damage,

c. $50 for the dresser damage,

d. $60 for the fan,

e. $60 for additional cleaning costs, and

f. $20 for the wine consumed.

27. After deducting the $1,728 from the $2,000 deposit, I find the respondent must pay the applicant the remaining $272 deposit balance.

28. The *Court Order Interest Act* applies to the CRT. The applicant entitled to pre-judgment interest on the $272 from October 6, 2022, the date it was required to be refunded under the contract, to the date of this decision. This equals $6.64.

29. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was partially successful, so I find they are entitled to reimbursement of $62.50 for half their paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

30. Within 21 days of the date of this order, I order the respondent to pay the applicant a total of $341.14, broken down as follows:

a. $272.00 in debt,

b. $6.64 in pre-judgment interest under the *Court Order Interest Act*, and

c. $62.50 CRT fees.

31. The applicant is entitled to post-judgment interest, as applicable.

32. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member