



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hostgenius Management Inc. v. Wavelength Properties Inc.*, 2024 BCCRT
442

B E T W E E N :

HOSTGENIUS MANAGEMENT INC.

APPLICANT

A N D :

WAVELENGTH PROPERTIES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about payment under a property management services agreement.
2. Wavelength Properties Inc. hired Hostgenius Management Inc. to manage its short-term rental property. Hostgenius says Wavelength failed to pay its invoices, and

claims \$5,000 for unpaid property management services and cleaning fees. An employee represents Hostgenius.

3. Wavelength says Hostgenius did not fulfill its contractual obligations. It also says Hostgenius did not provide invoices, only screenshots of charges it says it could not review for accuracy. Finally, Wavelength disputes commissions it says Hostgenius charged for rental bookings made before the agreement's start date. A person I infer is an employee represents Wavelength.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. To some extent, the parties call into question each other's credibility, or whether they are telling the truth. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions.
6. Here, the questions of credibility mainly have to do with when Wavelength first expressed dissatisfaction with Hostgenius's services and whether invoices were shared. I find they have little to do with whether there was a contractual breach, which is what I find is at the center of this dispute. So, I find I can fairly decide the key issues based on the documentary evidence and written submissions before me, and an oral hearing is not necessary.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. Where permitted by CRTA section 118, 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.

Late evidence

9. Wavelength argues I should not consider Hostgenius's evidence because it was submitted late. However, Wavelength was advised of the late evidence, and given the opportunity to respond to it in its submissions. I find no prejudice arises to Wavelength in these circumstances, and I have considered Hostgenius's late evidence in coming to my decision below.

ISSUES

10. The issues in this dispute are:
 - a. Did Hostgenius and Wavelength have a property management services agreement, and if so, what were its terms?
 - b. Did Hostgenius fundamentally breach the agreement?
 - c. Is Hostgenius entitled to compensation for unpaid property management services and cleaning fees?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Hostgenius must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.

The property management services agreement

12. Both parties rely on a written agreement that lists the parties as Hostgenius and an individual, Lougie Murdocco. Based on the evidence before me, I find Lougie Murdocco was likely Wavelength's employee. However, I find the written agreement was not a valid and enforceable contract between them, as neither Hostgenius nor Lougie Murdocco signed it, and there is no other evidence they intended to enter into a contractual relationship.
13. Rather, I find Hostgenius and Wavelength intended to be bound by the written agreement. I say this because their correspondence in evidence shows their employees typically communicated using "wavelengthproperties" and "hostgenius" email accounts, and discussed matters and obligations relating to the written agreement's terms. Also, neither party disputes that Hostgenius provided services to Wavelength based on the written agreement. So, I find Hostgenius and Wavelength contracted for property management services on the terms of the written agreement in evidence, despite it not being signed by either of them. More on the agreement's terms below.

Alleged fundamental breach

14. Hostgenius says Wavelength failed to pay for its property management services and cleaning fees.
15. For its part, Wavelength says Hostgenius failed to fulfill the agreement's terms by a) not integrating its platform with short-term rental websites to ensure a seamless booking process, b) not providing adequate guest support, c) pricing the property below market rate, and d) failing to maintain appropriate housekeeping and security standards. Based on these allegations, I find Wavelength says Hostgenius fundamentally breached the agreement, so it is not responsible to pay any of the agreed amounts.
16. A fundamental breach occurs when a party fails to fulfill a contract's primary obligation 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] 1 SCR 426). Put another way, a fundamental breach is a breach that destroys the contract's whole purpose and makes further performance impossible (see *Bhullar v. Dhanani*, 2008 BCSC 1202).

17. As the party alleging fundamental breach, I find Wavelength bears the burden of proving it. For the reasons that follow, I find none of Wavelength's alleged contractual breaches amounted to a fundamental breach.
18. First, email evidence shows that manual, rather than automatic, updates had to be made to Hostgenius's calendar to accurately reflect bookings made on one particular short-term rental website. This involved Wavelength sending Hostgenius booking information from that website, so that Hostgenius could manage those bookings as agreed. However, the written agreement does not provide for integration of Hostgenius's platform with Wavelength's short-term rental website accounts, or for automatic calendar synchronization. So, I find the lack of integration and automation was not a breach at all.
19. Next, the agreement provides that Hostgenius managed Wavelength's guest communications. While there were times that Hostgenius seems to have provided check in information to guests at the last minute, there is no evidence this was a regular occurrence, or led to requests for compensation. Wavelength submitted evidence of a guest contacting its employee about issues with appliances in the rental property, but the text messages show Hostgenius arranged to resolve the matter by the time Wavelength responded. So, I find Hostgenius did not breach the agreement by failing to communicate with or support the guests either.
20. Hostgenius's obligations included pricing the rental "for the highest occupancy at the best rates" using an algorithm to reflect things like seasonal adjustments, last-minute bookings, and holidays. The agreement specified Hostgenius would "do our best, but results are not guaranteed", and Wavelength was responsible to inform Hostgenius of any minimum rates or rate changes. Wavelength says Hostgenius priced their rental under market value. However, there is no evidence of the rental property's

market value, that Hostgenius failed to price the rental property at Wavelength's rates, or that the property was actually rented at a below-market value rate. So, I find Hostgenius did not breach its price management responsibilities.

21. Finally, Wavelength says Hostgenius failed to maintain appropriate housekeeping and security standards. In particular, Wavelength says Hostgenius's cleaners left wet towels and linens in the rental property on one occasion. While Hostgenius does not dispute this, there is no documentary evidence to support the allegation. In any event, I find a single example of poor housekeeping service does not amount to a fundamental breach. Turning to the alleged failure to maintain proper security standards, Wavelength says when its employee went to the property to drop off extra linen, Hostgenius's cleaners had left the door "open/unlocked". Wavelength did not provide documentary evidence, such as a statement from its employee or photos, to support this hearsay evidence, or explain why it did not do so. Hostgenius denies the door was left open, explaining it was secured by an "August lock" that Wavelength itself remotely controlled. On the evidence before me, ultimately I find it unproven Hostgenius compromised the rental property's security by leaving the door open or unlocked, or in any other way.

22. In the absence of a fundamental breach, I find Hostgenius was entitled to be paid the amounts the parties agreed under their property management services agreement.

Unpaid property management services and cleaning fees

23. Hostgenius claims \$5,000 for unpaid property management services and cleaning fees. As noted above, it bears the burden of proving it is entitled to the claimed amount.

24. The parties' agreement provides for the following payments, plus tax: a) a monthly management fee of \$59.99, b) a 15% commission "on all booking revenue", and c) cleaning fees. It also says Wavelength will reimburse Hostgenius for supplies or essential items Hostgenius provides to the rental property, based on an essential items and replenishment list.

25. Hostgenius submitted screenshots of a spreadsheet including outstanding balances of \$441 for “maintenance work”, \$2,675.90 for cleaning fees and commissions, and \$251.96 for monthly management fees. Wavelength says Hostgenius did not provide it with invoices, just a fuzzy screenshot of the spreadsheet with the invoiced amounts. However, Wavelength submitted legible copies of the screenshot, so I find it was able to view the invoiced amounts and their descriptions. Even if Hostgenius did not provide Wavelength with formal invoices, that does not mean Wavelength is not responsible to pay what it owes.
26. The description of the maintenance work is a bedframe. Though the essential items and replenishment list is not in evidence, as Wavelength does not dispute the maintenance work described, I find the \$441 bedframe is likely an essential item for which Hostgenius is entitled to be reimbursed.
27. Wavelength says it is not obliged to pay Hostgenius a commission on bookings made but not completed before the parties’ agreement. I disagree. The agreement’s term was from February 8, 2022, to February 8, 2023. I find the 15% commission applies to all booking revenue for bookings made or completed in that period, since the agreement did not limit it to bookings made between those dates. So, I find Wavelength was responsible to pay Hostgenius a commission on bookings made before February 8, 2022, if they were completed within the agreement’s term. Since the spreadsheet reflects bookings completed within the agreement’s term, I find Hostgenius has proven its entitlement to \$2,675.90 for commissions and cleaning fees for those.
28. Finally, I find Hostgenius is entitled to \$251.96 for its monthly management fees as provided in the agreement.
29. Together, the monthly management fee, the commissions and cleaning fees, and the bedframe total \$3,368.86. Hostgenius claims \$5,000, but does not explain why, and I find it has not proven it is entitled to this amount. So, I order Wavelength to pay Hostgenius \$3,368.86.

INTEREST, CRT FEES, AND EXPENSES

30. The agreement's interest term says contractual interest is calculated from the invoice's date until paid. It also says interest "will be charged at the Bank of Canada Rate plus 3% and compounded on a monthly basis". I infer this means the Bank of Canada policy interest rate. Based on this term, I find the parties agreed interest would be payable on outstanding balances. However, terms about how interest will be calculated must be sufficiently clear to be enforceable (see, for example, *Landry v. Rich*, 2014 BCSC 935 at paragraphs 49 to 54).
31. Here, the term does not specify whether the interest rate is to be calculated using the Bank of Canada policy interest rate on the date payment was due or the date payment was made, or whether it was a floating rate tied to Bank of Canada policy interest rate fluctuations. So, I find the term about contractual interest is unenforceable for uncertainty.
32. The federal *Interest Act* say when parties agree interest is payable but their agreement does not fix a rate, the interest rate is 5% per year. I find this provision applies' to the parties' agreement. So, I allow contractual interest on the \$3,368.86 at 5% per year. Calculated from June 22, 2022, the day Hostgenius sent Wavelength the spreadsheet with the amounts owing, this interest equals \$317.04.
33. 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 find Hostgenius is entitled to reimbursement of \$200 in CRT fees. Hostgenius also claims \$1,000 in dispute-related expenses for "administrative hours". I find this is a claim for time spent on this dispute. Under CRT rule 9.5(5), the CRT does not order one party to compensate another for time spent dealing with a dispute except in extraordinary circumstances, which I find do not exist here. So, I dismiss Hostgenius's claim for "administrative hours".

ORDERS

34. Within 30 days of the date of this order, I order Wavelength to pay Hostgenius a total of \$3,885.90, broken down as follows:
- a. \$3,368.86 in debt,
 - b. \$317.04 for contractual interest, and
 - c. \$200 for CRT fees.
35. Hostgenius is entitled to post-judgment interest, as applicable.
36. This is a validated decision and order. 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.

Megan Stewart, Tribunal Member