



Civil Resolution Tribunal

Date Issued: June 20, 2024

File: SC-2023-008048

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bovkun dba Reveal Cars v. RGN Management Limited Partnership, 2024*
BCCRT 577

B E T W E E N :

STANISLAV BOVKUN, Doing Business As REVEAL CARS

APPLICANT

A N D :

RGN MANAGEMENT LIMITED PARTNERSHIP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This dispute is about leased office space, and whether it was fit for its purpose.
2. The applicant Stanislav Bovkun, doing business as Reveal Cars, says that he leased office space from the respondent, RGN Management Limited Partnership (RGN), but

the space was incomplete and not useable for his business. RGN says the office space was useable, and in any event, the lease does not allow Mr. Bovkun to terminate the lease early.

3. Mr. Bovkun is self-represented. RGN is represented by Wilfred Hing Yin Lee, its city manager for Vancouver.

JURISDICTION AND PROCEDURE

4. 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.
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 court.
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.

ISSUES

8. The issues in this dispute are:

- a. Was Mr. Bovkun entitled to terminate the agreement?
- b. Did RGN breach the contract by not providing the amenities claimed or fixing the deficiencies?
- c. If so, does RGN owe Mr. Bovkun \$2,694.68 for return of rent and damage deposit, and his costs to relocate?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Bovkun must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that are relevant to explain my decision.
10. RGN is registered as a limited partnership providing management services to business centres.

The Agreement

11. Mr. Bovkun signed an office agreement with RGN to lease office space at a new building in Vancouver for 6 months, starting May 15 and ending November 30, 2023.
12. The agreement was for \$725.60 each month for office space and included furniture and amenities. A deposit of 2 months rent was required. Although the agreement referred to this as a refundable service retainer, I will use the term deposit in this decision, consistent with the parties' submissions. The agreement incorporated two documents: terms and conditions, and house rules.
13. Mr. Bovkun first brought his concerns about the office space in June 2023. He met with RGN's team lead area manager about the issues. On June 8, 2023, KH, RGN's area manager, sent an email to Mr. Bovkun which admitted it was a new location, and that there were matters to be improved and resolved. The matters mentioned were ceiling painting, ceiling wire correction, bathroom shower head and levers, and a filing

cabinet. The email set out a schedule to deal with each of these issues, except the shower which did not have a timeline.

14. Between June 8 and July 14, 2023, Mr. Bovkun and RGN exchanged emails concerning furniture, mail delivery, and delay of the door sweeper installation. Mr. Bovkun did not provide evidence of other communication about issues with the office space.
15. On July 14, 2023, Mr. Bovkun emailed a letter to RGN that he was terminating the agreement as of July 15, 2023. Mr. Bovkun says that RGN breached the agreement.
16. Mr. Bovkun claims \$2,694.68 for:
 - a. Return of his deposit,
 - b. Refund of 2 months rent he paid,
 - c. Other losses including moving expenses, contractual issues, time loss, and emotional damage or damage to his reputation.
17. I note Mr. Bovkun's claimed \$2,694.68 is less than the amount of the deposit and rent paid together. The evidence and submissions do not explain this discrepancy, but it does not matter given my conclusions below.
18. The agreement does not provide for early termination by Mr. Bovkun. So, I find Mr. Bovkun is claiming that RGN fundamentally breached the agreement by failing to provide a useable office space. A fundamental breach is where a party fails to fulfill a primary obligation in a contract, depriving the other party of substantially the whole benefit of the contract. See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC). Put another way, a fundamental breach is one that destroys the whole purpose of the contract and makes further performance of the contract impossible. See *Bhullar v. Dhanani*, 2008 BCSC 1202.

19. If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform any more terms of the contract. See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23.
20. If RGN fundamentally breached the agreement, Mr. Bovkun was entitled to end the agreement and recover his losses.
21. In the termination letter, Mr. Bovkun said the office space was unfit for [its] purpose, because it was incomplete, not as agreed, and not in an acceptable condition. He says he lost time, money, and productivity.
22. RGN submits that the office space was ready for use on May 15, 2023. RGN says the office space was new, finished, and useable, as agreed. The terms and conditions say at paragraph 3.1 that RGN is not liable to Mr. Bovkun for any loss or damage because of RGN's failure to provide a service if the event is outside of its reasonable control, unless RGN acted deliberately or was negligent. The agreement also says that RGN had to have written notice of any issue, and reasonable time to fix it. RGN says the issues were with amenities which are managed by the property management company, but completion dates were beyond RGN's control.
23. The agreement is not specific as to what was included in the office space rental. The termination letter set out issues with the office space. RGN does not dispute that the amenities at issue were included in the agreement.
24. The issues set out in the termination letter included:
 - a. Lack of printer. Mr. Bovkun had to provide his own printer for the first month. This is generally supported by email from KH dated June 8, 2023, saying that all printers were then working correctly.
 - b. Mr. Bovkun's furniture order was not correct. Emails between Mr. Bovkun and RGN indicate that two desks and two chairs would be provided, and other furniture could be ordered. RGN provided photographs of the office space with two desks and two chairs. The emails confirm that RGN would also provide

- filing or storage cabinets, but that the items Mr. Bovkun chose were not available. Other items were available.
- c. Mail. Mr. Bovkun advised the manager on June 7 that there were problems with the mail delivery to his office space. RGN's evidence is that this was addressed with Canada Post on July 7. The house rules indicated that RGN would receive mail on the tenants' behalf. The house rules also noted that mail is received at the home centre, but there is no evidence of what the home centre is.
 - d. Excessive emails sent to tenants about the door sweeper installation delays.
 - e. Unprofessional and unhelpful behaviour of staff. Each party made vague submissions about interactions between Mr. Bovkun and staff. Neither party provided any details of those interactions.
25. The termination letter also set out issues about the kitchen, lights, the AC controller unit, housekeeping, lack of a procedure if a tenant is locked out, the enterphone and accessible entry, and the shower and HVAC not working one day. Mr. Bovkun did not provide any evidence that these were brought to the attention of RGN prior to the termination letter.
26. I find that Mr. Bovkun knew when he signed the agreement that this was a new building:
- a. The emails between the parties before the agreement was signed referred to the building as new office space.
 - b. The terms and conditions included that if the office space was not ready at the beginning of the lease, Mr. Bovkun could choose to delay moving in, could take another office space in a nearby location, or could cancel the agreement.
27. I find that the problems with the office space were not unreasonable for a new building, that the issues were not in RGN's reasonable control, and that there was no unreasonable delay in fixing the issues once notified. I find none of the issues were fundamental to the use of the office space as an office.

28. Mr. Bovkun provided no evidence that any of the issues impacted his business. I appreciate that the various deficiencies were frustrating and annoying to Mr. Bovkun, but he has not shown that RGN fundamentally breached the agreement.
29. As I have found that RGN did not fundamentally breach the agreement, Mr. Bovkun was not entitled to terminate the agreement. So, I find it was Mr. Bovkun who breached the parties' agreement. Although RGN says Mr. Bovkun failed to pay for the remainder of the lease, it did not file a counterclaim, so I did not consider whether it is entitled to damages due to Mr. Bovkun's breach.
30. Mr. Bovkun also claims other losses to relocate, including moving expenses, contractual issues, time loss, and "emotional / reputational damage." He provided no evidence or receipts with relation to contractual issues, time loss, or emotional damage or damage to his reputation. As I have found he was not entitled to terminate the agreement, I find he is not entitled to these expenses.
31. I dismiss Mr. Bovkun's claim and this dispute.

CRT Fees

32. 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. As Mr. Bovkun was not successful, I do not order reimbursement of any tribunal fees. RGN did not pay fees or claim expenses.

ORDER

33. I dismiss Mr. Bovkun's claim and this dispute.

Deanna Rivers, Tribunal Member