



Civil Resolution Tribunal

Date Issued: March 4, 2025

File: SC-2024-002013

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Savard v. Mirzaei*, 2025 BCCRT 279

B E T W E E N :

ANDRE MARC SAVARD and SANDRA MARY LOPEZ

APPLICANTS

A N D :

NILOUFAR MIRZAEI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. The applicants, Andre Marc Savard and Sandra Mary Lopez, rented their vacation property to the respondent, Niloufar Mirzaei. After staying at the property, the respondent successfully claimed a chargeback from their credit card company, which resulted in VRBO issuing them a full refund of the rental fee. The applicants

say they did not agree to this refund and claim the full amount of the rental fee they would have received, \$3,435.62. The applicants are self-represented.

2. The respondent says they are entitled to the refund they received. They say the applicants misrepresented the property in the VRBO listing and that their holiday was less enjoyable than expected.
3. The respondent is self-represented. As they did not specify their title or pronouns, I use neutral pronouns, intending no disrespect.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. These are the CRT's formal written reasons.
5. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties call into question the credibility, or truthfulness, of the other's evidence. Under the circumstances, I find that I am properly able to assess and weigh the evidence and submissions before me without an oral hearing. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is at issue. Neither party requested an oral hearing. The claim is also for a relatively small amount. So, bearing in mind the CRT's mandate for proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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. Does the respondent owe the applicants \$3,435.62 for the property rental?
 - b. If so, is the respondent entitled to a set-off against the amount owed for the applicants misrepresenting the property or providing a poor vacation experience?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means “more likely than not”. While I have read all the parties’ submissions and evidence, I only refer to the evidence and arguments that I find relevant to explain my decision.
10. The parties agree on the following facts:
 - a. The respondent booked the applicants’ vacation property through the online rental listing service VRBO, for a group of 19 guests arriving on December 23 and departing on December 26, 2021.
 - b. The rate for the rental was \$4,147.65, which the respondent paid. Of this amount, \$3,435.62 went to the applicants, with the remainder going to taxes or VRBO fees.

- c. During their stay, the respondent contacted the applicants to complain about a non-functioning oven. Mr. Savard went to the property to investigate and offered possible solutions, which I discuss below.
 - d. The respondent's group stayed at the property for the duration of the booking.
 - e. After the group left, the applicants offered the respondent a \$300 discount for the inconvenience caused by the oven. The respondent rejected this offer and demanded a refund of half the rental fee. The parties did not discuss a refund further.
 - f. In April or May 2022, the respondent applied for a chargeback through their credit card company for the full amount of the rental fee. The respondent's application was successful and VRBO refunded their credit card. VRBO then withheld the refunded amount from the applicants' other bookings.
11. The applicants provided evidence of a booking confirmation. Neither party provided evidence showing any additional rental terms.
12. I find that the parties had a contract for the rental of the property and that the respondent agreed to pay the applicants a rental fee of \$3,435.62, plus VRBO fees and taxes. Despite this agreement, the respondent has not paid the applicants.
13. I find the respondent must pay the applicants the agreed-upon rental fee, \$3,435.62, unless the respondent can show they are entitled to a set-off against this amount.

Set-off

14. The respondent did not file a counterclaim in this dispute. However, given the context of their submissions, I infer that they believe a set-off of the entire rental fee is appropriate here. The burden of proving a set-off is on the respondent, as the party alleging it.

15. An equitable set-off may be applied when one party claims a debt that is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without permitting a set-off: see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34. I find that equitable set-off applies here because the mutual alleged debts both involve the parties' underlying obligations surrounding the property rental.
16. I find there are two types of complaints underlying the respondent's claim for set-off: misrepresentation about the rental property and breach of a "peace of mind" contract. I discuss each below.

Misrepresentation

17. The respondent says the applicants falsely advertised or misrepresented the vacation property in the VRBO listing and in statements made prior to their stay.
18. A misrepresentation is a false statement of fact that induces a reasonable person to enter into a contract. If the applicants misrepresented the property, either fraudulently or negligently, the respondent may be entitled to compensation for losses arising from that misrepresentation. See *Ban v. Keleher*, 2017 BCSC 1132 at paragraphs 16 and 31 and *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC), [1993] 1 S.C.R. 87.
19. To prove an allegation of misrepresentation, the respondent must show that the applicants made a statement that was false, inaccurate, or misleading, and that the respondent reasonably relied on it in renting the property.
20. For the following reasons, I find that the respondent has not proven any of its claims of misrepresentation:
 - a. The respondent says the property is "vastly different" from the pictures included on the VRBO listing but has not provided pictures from the VRBO listing or pictures taken upon their arrival at the property to prove this claim.

- b. The respondent says there were ongoing renovations at the property that were not disclosed and provides a photograph of a basement bedroom with bare concrete floors. The applicants do not dispute that they were in the middle of replacing the floors in one bedroom and did not have time to complete the job prior to the respondent's stay. However, the applicants undisputedly informed the respondent about the floor in advance of their stay, so I find that they did not misrepresent this. While the respondent says that it was too late to cancel the booking, there is no evidence that they tried to do so or that they raised this as an issue with the applicants until after their stay.
- c. The respondent says the applicants falsely advertised the capacity of the property (20 guests) and that there were not enough kitchen supplies. However, the respondent admits that all 19 of their guests were able to stay at the property. I find that the capacity of the property would be better measured by beds rather than cutlery and that the respondent has not proven that the property could not reasonably accommodate their guests.
- d. The respondent says that Mr. Savard is listed as a woman on VRBO. I find they have not proven this and that it is not relevant to the advertising or the property's condition.
- e. The respondent says the applicants assured them that they would clear the snow. However, the respondent has not provided evidence that the applicants did not clear the snow to a reasonable standard.
- f. The respondent says the applicants assured them that the oven was functional for turkey cooking. While an issue did arise with the oven, I find the issue was caused by an electrical problem that the applicants did not foresee. I find that the issue arose during the respondent's stay and that the applicants did not make the statement negligently.

21. Both parties provided screenshots of VRBO reviews. I do not know the circumstances of these other guests' experiences, so I put no weight on these reviews.
22. I note that the respondent says they have videos of the property, but they have not provided these as evidence. On the evidence before me, I find that the applicants did not make any misrepresentations about the property and that a set-off is not justified on this basis.

“Peace of Mind” Contract

23. Damages for disappointment, mental distress, inconvenience, and upset have been allowed in “peace of mind” contract cases, such as involving a lost or spoiled holiday or a cancelled party due to renovation delays: see *Jarvis v. Swan Tours Ltd.*, [1973] Q.B. 233 (C.A.), *Kelan Homes Ltd. v. Smith*, 1991 Can LII 397 (BCSC). In such cases, a major portion of the contract is to provide pleasure, relaxation, or peace of mind.
24. Here, the respondent says that they were looking forward to a comfortable, relaxing, and safe family reunion over Christmas. I accept that this was the agreed-upon purpose of their stay at the property. I find that the vacation rental was a “peace of mind” contract.
25. I find the respondent makes four complaints that could be the basis of a breach of a peace of mind contract: non-operational bathrooms, snow clearing negligence, ongoing renovations, and serious electrical problems. For the following reasons, I dismiss the first three complaints and accept the last one.
26. First, the respondent says that two bathrooms were non-functional due to clogged toilets. The applicants say the respondent called them about this on December 25, two days into their stay, and that Mr. Savard went to the property to plunge the toilets with the readily available plungers. The applicants say that clogged toilets do not make a bathroom non-functional but simply require someone to use a plunger. I

agree with the applicants' assessment and find the toilets were likely clogged by the guests' activities rather than defective bathrooms.

27. Second, the respondent says the applicants were negligent in their snow clearing, which resulted in a guest's car getting stuck in the snow. The respondent has not provided photographs or any other evidence showing negligent snow clearing. In any event, Mr. Savard ended up towing the car out of the snow for the guest on the day of their departure, so I find the respondent has not proven there was inconvenience.
28. Third, I considered the issue of "ongoing renovations". While the applicants had warned the respondent about the incomplete flooring project in one bedroom, they also said they had covered the concrete with carpet. The respondent provided a picture of a basement bedroom with rugs covering part of the floor, but not all of it. I agree with the respondent that the uncovered area does not appear welcoming or comfortable.
29. However, I find that the respondent took no steps to mitigate their damages. A person alleging a breach of contract will not be able to recover for those losses which they could have avoided by taking reasonable steps (see *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 at paragraph 24). The applicants say they had more rugs in storage. I find it likely that the applicants would have resolved this issue had the respondent raised this concern. So, I decline to award damages.
30. Lastly, the parties do not dispute that there was an electrical issue at the house during the respondent's stay. On December 24, the respondent informed the applicants that the oven would not bake. This was important to the respondent, as they wished to bake their Christmas turkey.
31. Mr. Savard drove to the rental property and investigated the oven in the presence of one of the respondent's guests. Mr. Savard says he thought the issue was with the oven, so he replaced it with another oven from a nearby property.

32. Unfortunately for all parties, the new oven did not fix the issue. Mr. Savard says he then realized the problem was with the electrical breaker rather than the appliance. He provided instructions to the respondent for how to resolve the issue by turning off the breaker to the hot tub. He says he also offered to let the respondent cook their food in the oven located at a nearby rental property that was vacant.
33. I accept that a non-functional oven on Christmas Eve during a large family gathering caused the respondent disappointment, inconvenience, and distress. I find that the applicants' failure to provide a functioning oven was a breach of contract.
34. I now turn to damages. I note that the respondent says they had to throw out some food. They do not describe how much food was thrown out, the food's value, or what impact this had on their ability to eat a Christmas dinner. I also note that the oven was only an issue for part of their stay, and the applicants provided the respondent with two possible solutions. I infer the respondent used one of the solutions or found another way to cook their food, as they stayed for two more nights.
35. The applicants previously offered the respondent a \$300 discount for the inconvenience caused by the oven. While the applicants are not bound by this offer, I find that it represents a fair award of damages, on a judgment basis. I find that the respondent is entitled to a set-off of \$300 against the \$3,435.62 debt they owe for the rental fee. So, I find that the respondent owes the applicants \$3,135.62.
36. The applicants are entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from May 15, 2022, the later of two dates the applicants say the credit card company provided the refund, this equals \$354.35.
37. 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. As the applicants were mostly successful, I find the respondent must reimburse the applicants \$175 in CRT fees. The applicants also claimed an expense of \$9.75 for serving the Dispute Notice on the respondent by

registered mail, and provided a receipt. I find this was a reasonable dispute-related expense, so I order the respondent to reimburse it.

ORDERS

38. Within 30 days of the date of this decision, I order the respondent, Niloufar Mirzaei, to pay the applicants, Andre Marc Savard and Sandra Mary Lopez, a total of \$3,674.72, broken down as follows:

- a. \$3,135.62 in damages,
- b. \$354.35 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$184.75, for \$175 in CRT fees and \$9.75 in dispute-related expenses.

39. The applicants are entitled to post-judgment interest, as applicable.

40. 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.

Peter Nyhuus, Tribunal Member