



# Civil Resolution Tribunal

Date Issued: February 27, 2024

File: SC-2023-000024

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fiveflavors v. Gill*, 2024 BCCRT 187

B E T W E E N :

FIVEFLAVORS

**APPLICANT**

A N D :

HUMKIRAT S. GILL and PLG PROPERTY MANAGEMENT LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Mennie

## INTRODUCTION

1. This dispute is about a failed property lease.
2. The applicant, Fiveflavors, is a partnership made up of five individuals. Fiveflavors agreed to lease restaurant space from the respondent PLG Property Management Ltd. (PLG). The respondent Humkirat S. Gill is PLG's director. Fiveflavors says that

PLG failed to install a commercial exhaust hood so it could not open its restaurant. Fiveflavors asks for its \$2,500 security deposit to be returned and damages for money and time it spent renovating the property and preparing to open the restaurant.

3. PLG and Mr. Gill say that Fiveflavors was unwilling to cover the cost of the commercial exhaust hood and chose to terminate the lease. They say they are not responsible for Fiveflavors' renovation costs, but do agree to return the \$2,500 security deposit.
4. Fiveflavors is represented by one of its partners, Md. Mostafijur Rahman. Mr. Gill represents himself and PLG as its director.

## **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.
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. 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.
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.

## **ISSUE**

8. The issue in this dispute is what damages, if any, Fiveflavors should receive.

## EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Fiveflavors must prove its claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note that Mr. Gill did not file a Dispute Response, however I infer that PLG's Dispute Response was intended to be for PLG and Mr. Gill. Both PLG and Mr. Gill did not provide any evidence despite having been given the opportunity to do so.
10. In July 2022, Fiveflavors contacted Mr. Gill, who represented PLG, about leasing a property for a restaurant. It is undisputed that Fiveflavors and PLG agreed to a 5 year lease at \$2,000/month in the first year. Neither party provided a copy of a written lease agreement. The parties' correspondence is between the Fiveflavors partners and Mr. Gill in his capacity as the director of PLG. So, I find that the lease agreement was between Fiveflavors and PLG.
11. On July 30, 2022, Fiveflavors applied for a business license from the local municipality. On August 8, 2022, Fiveflavors paid \$2,500 to 1145137 BC Ltd. which is not a party to this dispute. I infer from the parties' correspondence that this payment was made at PLG's direction as a security deposit for the lease. On August 9, 2022, the municipal inspector told Fiveflavors that their business license would not be approved unless they installed a commercial exhaust hood.
12. Fiveflavors says that Mr. Gill gave multiple assurances that PLG would install a commercial exhaust hood on the property so that the restaurant could open. PLG and Mr. Gill do not deny that Mr. Gill assured Fiveflavors that PLG would install a commercial exhaust hood on the property.
13. Fiveflavors says it relied on Mr. Gill's assurances and began renovating the property. It provided receipts showing it spent \$539.96 in expenses related to the renovation such as cleaning supplies and paint. It says it bought custom t-shirts with the restaurant's logo for \$87 and set up a website. Though Fiveflavors claimed \$1,449 in

its Dispute Notice for the website cost, it says in its submissions that it later negotiated with the web hosting company and the bill was reduced to \$362.65.

14. Mr. Gill emailed Fiveflavors on September 20, 2022, and said that the commercial exhaust hood would cost \$15,045. Mr. Gill said this was too expensive for a \$2,000/month lease, but it could be done if Fiveflavors agreed to pay \$3,000/month. When Fiveflavors did not agree to pay \$3,000/month, Mr. Gill, through 1145137 BC Ltd., sent Fiveflavors a \$2,500 cheque for its security deposit. Fiveflavors refused to accept the \$2,500 and demanded additional money for its renovation, t-shirt, and website expenses.
15. I find that Mr. Gill, as PLG's director, agreed to provide Fiveflavors with a suitable restaurant space for \$2,000/month and promised to install a commercial exhaust hood. This is reflected in the parties' communications and by Fiveflavors' actions in spending time and money on renovating the property. PLG later refused to install the commercial exhaust hood when it realized that the cost would be too high. I find that this was a breach of the parties' agreement and that PLG must pay damages to Fiveflavors.
16. The general rule for assessing damages for a breach of contract is that the innocent person is entitled to the amount of money that would put them in the same position as if the contract had been performed. These are called "expectation damages". However, I find that I cannot quantify expectation damages in this case because it is unclear what kind of profit, if any, Fiveflavors would have earned if its restaurant had opened.
17. When it is not possible to assess expectation damages, then the innocent person's losses can be assessed as "reliance damages". Reliance damages compensate the innocent person for the expenses they incurred relying on the existence of the contract (see *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 at paragraph 108). I find that it is appropriate to assess Fiveflavors' damages as reliance damages.

18. Fiveflavors provided bank statements and receipts showing that it paid \$539.96 in renovation expenses and \$362.25 in website hosting expenses. I note that PLG and Mr. Gill did not dispute these amounts. I find that Fiveflavors' relied on the lease when it paid these expenses and that it is entitled to these amounts as damages.
19. Fiveflavors claims \$87 for making custom shirts. Though it submitted a photo of one t-shirt with its logo as evidence, Fiveflavors did not provide any evidence such as receipts or bank statements showing that it paid \$87. So, I find that Fiveflavors has not proven its damages and dismiss its claim for t-shirt expenses.
20. Fiveflavors claims \$400 for its work renovating the property. Fiveflavors provided photos showing it renovated the property, though it did not provide a breakdown of its partners' time spent on this project or an hourly rate. Based on the photos and on a judgment basis, I find that \$400 is a reasonable amount to compensate Fiveflavors for its time spent renovating the property. So, I award \$400 as damages.
21. Both parties agree that Fiveflavors should receive its security deposit. So, I will make an order that PLG return the \$2,500 security deposit.
22. Mr. Gill is PLG's director and I find that he was not a party to the contract in his personal capacity. This is because a corporation is a separate legal entity from its directors and employees. Fiveflavors did not provide any legal basis for why Mr. Gill should be personally liable. So, I dismiss Fiveflavors' claim against Mr. Gill personally.
23. The *Court Order Interest Act* applies to the CRT. Fiveflavors is entitled to pre-judgment interest on the \$539.96 it spent on renovations from August 8, 2022, the date it paid these costs, to the date of this decision. This equals \$33.52. Fiveflavors is entitled to pre-judgment interest on the three installments it paid for \$362.25 in website costs from August 15, 2022, September 12, 2022, and October 11, 2022, to the date of this decision. This equals \$21.90. It is unclear when Fiveflavors completed the renovations, so I find that it is entitled to pre-judgment interest on the \$400 from September 20, 2022, the date when PLG said it would not proceed with the lease, to the date of this decision. This equals \$24.03. PLG attempted to repay the security

deposit in November 2022, so I do not award any pre-judgment interest on this amount. In total, Fiveflavors is entitled to \$79.45 in pre-judgment interest.

24. 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. While Fiveflavors was largely successful in this dispute, PLG tried to return the \$2,500 security deposit much earlier and Fiveflavors refused. So, I find that it is fair and appropriate for Fiveflavors to receive \$87.50 which is half of its CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

25. Within 30 days of the date of this order, I order PLG to pay Fiveflavors a total of \$3,969.16, broken down as follows:
- a. \$2,500 as repayment of the security deposit,
  - b. \$1,302.21 as damages,
  - c. \$79.45 in pre-judgment interest under the *Court Order Interest Act*, and
  - d. \$87.50 in CRT fees.
26. Fiveflavors is entitled to post-judgment interest, as applicable.
27. I dismiss Fiveflavors' claims against Mr. Gill personally.
28. 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.

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Peter Mennie, Tribunal Member