



Civil Resolution Tribunal

Date Issued: August 07, 2024

File: SC-2022-009330

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cozystay Signature Group Management Ltd. v. Tse*, 2024 BCCRT 751

B E T W E E N :

COZYSTAY SIGNATURE GROUP MANAGEMENT LTD.

APPLICANT

A N D :

YUEN MAN TSE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Debra Febril

INTRODUCTION

1. This dispute is about the early termination of a property management services agreement.

2. The applicant, Cozystay Signature Group Management Ltd., provides short-term housing rentals and property management services. It alleges that the respondent homeowner, Yuen Man Tse, breached the contract between them, by terminating it early. It claims \$3,279.25 for cancellation and management fees. The applicant is represented by an employee.
3. The respondent, Yuen Man Tse, denies breaching the contract and says that the parties both agreed to end the contract early. She denies owing any money to the applicant. The respondent represents herself.
4. As I explain below, I find the applicant has not proven its claim that the respondent breached their contract by terminating it early. However, I do find it is entitled to \$600 in cancellation fees according to the parties' contract.

JURISDICTION AND PROCEDURE

5. 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.
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 court.

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.

PRELIMINARY ISSUES

9. The respondent did not receive the Dispute Notice within 90 days of it being issued by the CRT. She asks that the claim be dismissed because the applicant is non-compliant with the CRT rule 2.3 (3), which says when and how a notice must be served. I have decided in the circumstances of this case to allow it to be heard. The reasons for allowing the claim to proceed are explained further below.
10. The Dispute Notice was issued on January 27, 2023 issued and the respondent received it on May 17, 2023. It is deemed served on May 17, 2023 and the respondent's submitted her Dispute Response Notice on May 29, 2023 within the 14 days required.
11. The Tribunal's Rule 1.4 addresses non-compliance . I find that in exercising its discretion, the tribunal must consider the following factors:
 - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunals order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
12. First, this dispute only affects the named parties. Second, the non-compliance occurred early in the process, and both parties continued to actively participate in the facilitation process.

13. Third, the applicant complied with the rules during the facilitation process and while in the case management stage. I also note that the address on the claim is different from the address on the registered mail it was received at. The original address is out of the province, and I infer from this fact that this resulted in some delays in service.
14. Fourth, I find no prejudice to the respondent occurred because of the late notice in this case. The purpose of the Dispute Notice is to define the issues and provide fair notice to the other party of the claims against them. I find the respondent was provided with sufficient notice and the full particulars of the dispute.
15. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. It find it would be highly prejudicial to both parties, if the dispute is not resolved after the time and effort they have invested in the process since the claim began in the fall of 2022.
16. The second preliminary issue is, the applicant submitted some evidence that was not in English, with no translations provided. CRT rule 1.7(5) says all information and evidence must be in English or translated to English. So, in making my decision I have relied only on the evidence that is in English.

ISSUES

17. The issues in this dispute are:

- a. Did the respondent breach the terms of the parties' services agreement?
- b. Is the applicant entitled to compensation for cancellation and management fees?

EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, the applicant must prove its claim on a balance of probabilities. This means more likely than not. 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.

19. The undisputed evidence is that the applicant and respondent entered into a short-term rental full-service agreement on August 16, 2022.

THE CONTRACT

20. In reviewing the service agreement in evidence, I find that it sets out the parties' obligations to each other and includes provisions for both termination of the contract by either party and separate provisions for cancelling the contract.
21. Clause 7 of the agreement says the term is for a period of 3 years and any party may terminate the agreement with 60 days' written notice prior to the end of the first year or second year's end date. If notice is not given, then the terms of the agreement automatically renew year by year. The applicant alleges the respondent did not give proper notice and so breached this clause. I do not agree with this because the contract also includes more information about when the parties can terminate as opposed to cancelling, which I discuss in more detail below.
22. Clauses 8 and 9 identify the reasons either party may terminate the contract, none of which apply here. These include: a bona fide sale or demolition of the premises, a petition for bankruptcy is filed, the owner or agent fails to comply with any rule, order, determination, ordinance or law of any federal, provincial or local authority, relating to the operation of the premises, or the agent fails to remit net revenue split proceeds to the owner within 90 days. These provisions also say 60 days' notice is required to terminate it.

CANCELLATION

23. The second paragraph of clause 7 deals specifically with early cancellations. It says, "in the event of any cancellation of the agreement the Agent (the applicant) is to receive the balance of commissions due under this agreement during the term of

existing bookings and the owner/manager (respondent) is also to receive the balance of rental fees during the term of existing bookings.”

24. Appendix A provision 7 also provides more information about the parties’ obligations in the event of cancellation of their agreement. It states that during the agreement’s term, if bookings are cancelled due to the inability to book the premises for reasons unknown to the applicant, the respondent will pay the cancellation fee of \$100 CAD per order.

WRITTEN NOTICE

25. The respondent submitted a copy of the WeChat conversation that occurred on September 9, 2022, as evidence that the parties mutually agreed to end the contract. She said “After careful consideration, we’ve decided to take back the house for long-term leasing...” The applicant’s response is “Okay, sorry, I didn’t meet your expectations.” I accept this as evidence that the respondent gave the applicant notice of her intention to cancel their agreement. I find the parties mutually agreed to end the contract on September 9, 2022 because the applicant verbally accepted her reasons for cancelling the arrangement that day.
26. Under the contract, the applicant is entitled to the cancellation fees defined in provision 7 as \$100 per order, for a total of \$600

EXISTING BOOKINGS

27. The respondent agrees that there were existing bookings at the time she provided notice and says that she tried to have those bookings honoured by her new tenant. However, the respondent submitted documentary evidence that shows 6 existing bookings had to be cancelled. Provision 7 of the parties’ contract applies here which means the applicant is entitled to a total of \$600 in cancellation fees from the respondent.

I have determined on the evidence and submissions that the respondent did not breach the contract by ending it early because both parties mutually agreed. However, I do find that because the respondent did not pay the cancellation fees, she has breached those terms of the contract. The applicant is entitled the cancellation fees as set out in the contract.

28. I have considered the applicant's submissions and calculations of future losses, penalties, and management fees, but have found them to be outside the contract because the contract only includes cancellation fees. The contract is a complete agreement between the parties about what happens in case of cancellations. The parties did not agree to pay any future losses, penalties or management fees so I dismiss that part of the applicants claim.

29. Additionally, the applicant submitted a number of receipts for items it claims as a loss due to the breach. I do not agree and find the applicant agreed to pay for those items at its' own expense in the contract. Likewise, the respondent provided receipts for items that she agreed to cover the costs of, in the contract. I find the contract is clear that each party is responsible for the items and as such dismiss the applicants claim to them as losses.

30. The applicant did not provide any evidence of a verbal agreement by the respondent to pay future losses, penalties, management fees or specific items. I find these fees to be speculative and not supported by proof of actual harm or losses related to this claim. So, I dismiss that part of the applicant's claim for fees other than cancellation fees.

31. I find that the respondent breached the cancellation provisions which are clearly outlined in the contract itself. For the reasons explained above, I dismiss the applicant's claim for \$2679.25 for the future losses, penalties and management fees.

32. I allow the applicants' claim for cancellation fees and order the respondent to pay the cancellation fees as determined by the contract itself, to be a total of \$600.

CRT FEES AND DISPUTE RELATED EXPENSES

33. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest from the date of cancellation, September 9, 2022, to the date of this decision. This equals \$63.88.

34. Under section 4 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 applicant was partially successful, I find it is entitled to reimbursement of half of the paid CRT fees. This equals \$87.50. Neither party claimed dispute related expenses.

ORDER

35. Within 14 days of the date of this order, I order Yuen Man Tse to pay Cozystay Signature Group Management Ltd. a total of \$751.38, broken down as follows:

- a. \$600 in damages,
- b. \$87.50 for reimbursement of half the CRT fees, and
- c. \$63.88 for pre-judgment interest.

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

37. I dismiss the remainder of the applicant's claim.

38. 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.

Debra Febril, Tribunal Member