



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McLellan v. Legacy Senior Living - Leo Wertman Residences Ltd.*, 2024
BCCRT 802

B E T W E E N :

SUSAN MARY SEWELL, Executor of the Estate of RUTH MCLELLAN,
Deceased, SARAH JANE BALL, Executor of the Estate of RUTH
MCLELLAN, Deceased, and Ruth McLellan, Deceased

APPLICANTS

A N D :

LEGACY SENIOR LIVING – LEO WERTMAN RESIDENCES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about the return of a security deposit charged for carpet replacement. The applicants, Susan Mary Sewell and Sarah Jane Ball, Executors for the Estate of Ruth McLellan, deceased, claim the respondent, Legacy Senior Living – Leo

Wertman Residences Ltd., wrongfully charged the Estate for carpet replacement in a residential suite occupied by the applicant, Ruth McLellan deceased.

2. The applicants seek the return of \$2,310 that the respondent retained from Ruth McLellan's security deposit.
3. The applicants are self-represented. The respondent is represented by an authorized employee.

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). CRTA section 2 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. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.
6. 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.
7. 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.
8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

9. The *Residential Tenancy Act* (RTA) governs residential tenancies. Disputes under the RTA are outside the jurisdiction of the CRT. RTA Section 4(g) says it does not apply to living accommodation in a community care facility under the *Community Care and Assisted Living Act* (CCALA). For the reasons set out below, I find that the respondent meets the definition of an assisted living residence as defined in the CCALA and so I am satisfied that this dispute is within the jurisdiction of the CRT.

ISSUE

10. The issue in this dispute is whether the respondent must refund the applicants' remaining security deposit.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their 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.
12. Ruth McLellan entered a residency agreement with the respondent on October 7, 2019. Ruth McLellan died on June 21, 2022.
13. Section 38 of the residency agreement says that the respondent is not a nursing home or a health care facility regulated under the CCALA. Neither "nursing home" or "health care facility" are referred to in the CCALA. The CCALA regulates assisted living residences and community care facilities.
14. The CCALA defines an assisted living residence as a premises that provides housing, hospitality services and assisted living services to three or more adults who are not related to the operator. Hospitality services include meal services, housekeeping services, laundry services, social and recreational opportunities and a 24-hour emergency response system. Schedules A and B to the residency agreement show that the respondent provides housing, hospitality services and assisted living services

as defined in the CCALA. For these reasons, I find that the respondent meets the definition of an assisted living residence.

15. The residency agreement required a joint inspection of the suite at the end of the tenancy. This inspection was completed by the respondent and Mrs. Ball on July 13, 2022. The inspection was recorded on the Condition Inspection Report which forms a part of the Residency Agreement. The Condition Inspection Report is referred to in the residency agreement as a "Suite Condition Form". Although these documents have different names, I find that they both refer to a document that records the suite's condition at the time of move-in and move-out. The Report noted a carpet stain in the bedroom at the time of the move-out inspection.
16. The Report did not say how big the stain was. Neither party provided a picture of the stain. The applicants say there was one small stain, about the size of a quarter. The respondent did not dispute the stain's size.
17. Box X on the Report requires a tenant's signed agreement to any deductions from the security deposit. This box was not completed on the Report.
18. The respondent sent a letter to the applicant on August 15, 2022, which included a Statement of Account showing the move out charges including \$2,200 for carpet replacement, \$180 for removal, and \$50 for sani clean, plus GST. The respondent provided an invoice dated August 1, 2022, for the same amounts. The letter explained that the invoice was for the cost to restore the suite to its original condition as agreed in the contract.
19. Paragraph 8 of the Residency Agreement sets out the terms of the security deposit. It provides that the security deposit can be applied to "major repairs, damages or refurbishing costs" incurred by the respondent because of a breach by the resident of their obligations under the Residency Agreement. The Residency Agreement does not define major repairs, damages or refurbishing costs. The Residency Agreement also does not contain a specific term about returning the suite to its original condition at the tenancy's end.

20. In a September 6, 2022, e-mail, the respondent informed the applicants that it was unable to remove the carpet stain. The respondent also said that it discovered some black mould by the patio door that was not noticed during the inspection.
21. The applicants say that the black mould that the respondent discovered would have required it to replace the carpet in any event. The applicants also say that black mould is not damage that a resident could reasonably be responsible for.
22. The black mould may have necessitated carpet replacement. The applicants did not provide any evidence to support this claim. The cause of black mould is outside of common understanding and requires expert evidence to support the applicants' argument. So, it is not possible to assess the merit of this argument. But I find that the respondent prevented the applicants from raising a reasonable objection because the respondent did not inform the applicants of the additional damage until September 6, after the respondent had issued the invoice.
23. Both parties referred to Clause 26 of the Residency Agreement. Clause 26 sets the move out fees and says that additional charges will be applied for damage incurred during residency. These charges are to be outlined in the Condition Inspection Report on move out.
24. Clause 26 also includes a \$180 carpet cleaning fee and a \$50 per hour deep cleaning sanitization fee that will be applied against the security deposit. I find that these amounts were valid charges against the security deposit.
25. I find that Clause 26 of the Residency Agreement required the respondent to notify the applicants of the \$2,200 additional charge for carpet replacement at the time of move out. It is undisputed that the respondent did not notify the applicants of the carpet replacement until the August 15, 2022, letter.
26. On this basis, I find that the respondent did not follow the terms of the Residency Agreement for retaining part of the security deposit. So, the respondent must return the \$2,310 (\$2,200 plus GST) to the applicants.

27. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the \$2,310 from August 15, 2022, the date of the letter to the date of this decision. This equals \$199.76.
28. 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 the applicants are entitled to reimbursement of \$125 in CRT fees. The applicants did not claim any dispute-related expenses.

ORDERS

29. Within 30 days of the date of this order, I order the respondent to pay the applicants a total of \$2,634.76, broken down as follows:
- a. \$2,310 in debt,
 - b. \$199.76 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
30. The applicants are entitled to post-judgment interest, as applicable.
31. 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.

Mark Henderson, Tribunal Member