



Civil Resolution Tribunal

Date Issued: December 19, 2024

File: SC-2023-008429

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cera v. Newman*, 2024 BCCRT 1286

B E T W E E N :

DIVINA CERA

APPLICANT

A N D :

LISA NEWMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This is a dispute about breach of contract. The applicant, Divina Cera, says the respondent, Lisa Newman, breached their property management agreement. She claims \$2,986.25 for rental income and repair expenses.
2. Ms. Newman admits she owed \$242.50, but says Ms. Cera did not calculate it properly. She says she is not responsible for the repair expenses.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. 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. These are the CRT's formal written reasons.
5. CRTA section 39 says the CRT has discretion to decide the hearing's format, 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.
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.

Victoria Executive Rentals

7. In their submissions, no party addressed the relationship between Ms. Newman and Victoria Executive Rentals (VER). The parties' unsigned management services contract shows that the contract was between Ms. Cera and VER. The contract says

Ms. Newman is a co-owner of VER. Ms. Cera says Ms. Newman operates her business under the name VER. VER and the other co-owners are not named as parties in this dispute.

8. I asked CRT staff to conduct a search for VER in the partnership and corporate registries. They advised me that VER is not a registered partnership or corporation in BC.
9. Section 7 of the *Partnership Act* says that a partner is an agent of the firm and the other partners, and binds the firm and the other partners when carrying on business in the usual way. Section 12 says that a partnership is liable for the acts or omissions of any of its partners acting in the ordinary course of business. So, I find Ms. Newman would be jointly and severally liable with VER's other co-owners for Ms. Cera's claim, to the extent Ms. Cera has proved it as discussed below. Given the CRT's mandate to that includes speed, efficiency and proportionality, I decided it was not necessary to request evidence or submissions from the parties about the relationship.

Harassment

10. Ms. Newman alleges Ms. Cera bullied her. I decline to address these allegations as she did not file a counterclaim so this matter is not before me. In any event, to the extent that she claims that Ms. Cera was harassing her, I find no legal basis to consider this issue as there is no legally recognized tort of harassment in British Columbia.¹

Anonymization request

11. Ms. Newman requests that I anonymize her name in this decision. She says it could negatively impact her privacy and security, and lead to loss of business and damage to her reputation. Ms. Cera does not contest Ms. Newman's request.
12. Parties are generally named in CRT decisions, consistent with the open court principle, which promotes transparency and integrity in the justice system.² The CRT generally anonymizes decisions in certain limited situations such as disputes that

involve a vulnerable party, such as a child or adult with impaired mental capacity. The CRT also anonymizes decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names.

13. Ms. Newman has not explained how naming her in this decision would adversely affect her business or reputation, or how this would outweigh the importance of the open court principle. I find there is nothing in this dispute that would warrant departing from the open court principle. So, I find it is not appropriate to anonymize her name in this decision, and I decline her request to do so.

ISSUES

14. The issues in this dispute are:

- a. Does Ms. Newman owe Ms. Cera \$1,989 or some other amount for rental income?
- b. Does Ms. Newman have to reimburse Ms. Cera \$997.25 or some other amount for a door and window screen?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, Ms. Cera must prove her 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 I find relevant to explain my decision.

Background

16. Ms. Cera owned a property in Victoria, British Columbia. From 2017 to 2022, Ms. Newman managed the rental of the property.

Contract

17. The parties agree that VER or Ms. Newman provided management services to Ms. Cera. Ms. Cera says that Ms. Newman was responsible for all aspects of the rentals, and would be paid 15% of the rent collected each month. In submissions she says the contract terms are partly written and partly oral.
18. A contract may be written, verbal, or both. A verbal contract is enforceable, but it can be harder to prove than a written contract. For a valid contract to exist, the parties must have a “meeting of the minds.” This means that both parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms.³
19. Ms. Cera provided a blank Management Services Contract from VER. No details concerning Ms. Cera or her property are filled in. Ms. Cera says the contract was not signed.
20. Relevant to this dispute, the blank contract had boilerplate terms including that VER will receive a commission of 15% of the rent collected, VER will receive a placement fee of \$500 for each tenant subject to conditions that do not apply to this dispute, VER will pay net rental proceeds to the owner by the 15th of each month, the owner must consent to any repairs in excess of \$250, VER may pay for repairs for the owner, and VER will receive commission of 10% of the total cost of major repairs.
21. Ms. Cera also says that she and Ms. Newman had an oral agreement that Ms. Newman would be paid 15% of the rent collected each month, and was responsible for all aspects of the rental, including addressing damage. She does not say there was any agreement concerning payment for damage.
22. Ms. Newman did not dispute Ms. Cera’s description of their oral agreement or the terms of the unsigned contract. I find Ms. Newman had notice of Ms. Cera’s position, and had the opportunity to respond, but did not do so. So, I find Ms. Cera’s description of the alleged agreement and the unsigned contract together set out the parties’ agreement.

23. I find the parties' agreement included responsibility to repair or replace damaged property, but did not make Ms. Newman responsible for the cost of repairs or replacement.

Rental income

24. Ms. Cera says she did not receive the rental income for the property from July 10 to August 15, 2022. Ms. Newman does not dispute the property was rented. Neither party provided the tenancy agreement for that rental period.
25. In the Dispute Notice, Ms. Cera claims \$1,989 for unpaid rental income from July 10 to August 15, 2022. On January 3, 2023, Ms. Newman emailed Ms. Cera's lawyer that the rent for the period was \$2,340. After subtracting the 15% commission, this totals \$1,989.
26. Ms. Newman also says in the January 3, 2023 email that there is a 20% commission for short term rentals. She does not say that this was agreed to by Ms. Cera. I find that this was not a term of the parties' agreement.
27. In submissions, Ms. Cera says the rental income was \$3,160, less \$632 (15% management fee) for a total of \$2,528. On December 6, 2022, Ms. Newman emailed Ms. Cera's lawyer saying the total amount for July and August was \$3,160 less \$632 management, for a total of \$2,528.
28. In submissions, Ms. Newman admits VER owes Ms. Cera a half-month's rent. She says this equals \$242.50 after deducting their commission from the rent, because previous payments were overpaid. However, she provided no evidence of overpayments. So, I find Ms. Newman has not proved a right to a set-off.
29. Neither party explains explain these discrepancies in their evidence. Ms. Cera provided a statement of rental income for 2021 shows the property rented for \$1,900 each month from September to December 2021. She also provided a February to June 2022 tenancy agreement for \$1,900 monthly.

30. Given the evidence, I find it is more likely than not that the property was rented from July 10 to August 15, 2022, for \$2,340 as set out in Ms. Newman's January 3, 2023 email. This is approximately consistent with a rental rate of \$1,900 each month. Also, as Ms. Cera claims \$1,989 in her Dispute Notice, I cannot order more than the claimed amount.
31. I find Ms. Newman owes Ms. Cera \$1,989 in unpaid rental income.

Expenses

32. Ms. Cera says claims for the cost of repairs to the property. She claims \$997.25 for paint, a door, and a window screen. She provided receipts for \$63.40 for paint, \$450.45 for a window screen, and \$472.50 to supply and install a door, totalling \$986.35. She does not explain the discrepancy. Given my conclusion, nothing turns on this apparent calculation error.
33. Ms. Newman provided a screenshot of a text message photograph showing a small circular hole at the bottom of a door. The photo shows a door stop on the wall near the door, but it does not appear to match the position of the hole. She also provided a screenshot of a July 10, 2022 text which shows a window screen leaning against a window. Although I magnified the image as much as possible, I could see no obvious damage to the screen.
34. In submissions Ms. Cera also claims for damage to a closet, which I infer are the black marks mentioned in correspondence. She did not provide photographic evidence of this alleged damage.
35. As noted above, the parties' agreement did not make Ms. Newman responsible for property damage.
36. However, Ms. Cera says that Ms. Newman agreed to pay for the door and screen after the contract was ended. The emails and texts from July 9, 2022 to November 30, 2022, discuss the replacement and cost of the door and screens, but not who would be responsible for payment.

37. Ms. Newman says she is not responsible for the door and window screen, as it is part of the normal wear and tear of the property. She says she offered to pay for the repair, and had its handyman fix the dent, to settle this dispute. She says Ms. Cera chose to replace the door and screen when a repair would have been sufficient.
38. On November 30, 2022, Ms. Newman texted Ms. Cera “happy to pay the door and the screen as I said.” On December 21, 2022 Ms. Newman emailed Ms. Cera’s lawyer and offered to pay for the door but not the screen. On January 13, 2023 Ms. Newman emailed Ms. Cera’s lawyer offering to pay \$50 toward the screen. The lawyer responded refusing that offer.
39. I find that Ms. Newman agreed to arrange the repairs or replacement of the door and screens in the correspondence between the parties before November 30, 2022, but did not agree to pay for those items. This is consistent with the parties’ agreement.
40. After November 30, 2022, I find that Ms. Newman made a number of offers to settle this matter with Ms. Cera by paying a lump sum for the door, or for the screen. These offers were not accepted by Ms. Cera.
41. Given the above, I find Ms. Cera has not proved Ms. Newman is responsible to pay for the property damage. I dismiss Ms. Cera’s claim for expenses.

Interest

42. The *Court Order Interest Act* applies to the CRT. Ms. Cera is entitled to pre-judgment interest on the \$1,989 owing for rental income from August 15, 2022, the date it was due, to the date of this decision. This equals \$203.83.

Fees and Dispute-related Expenses

43. Under CRTA section 49 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 each party was partly successful in this dispute, and so is entitled to reimbursement of half their paid CRT fees. Ms. Cera paid \$150 in CRT fees, and Ms. Newman paid \$50 in CRT fees, so I find Ms. Cera is entitled to reimbursement of \$50.

44. Neither party claimed any dispute-related expenses.

ORDERS

45. Within 30 days of this order's date, I order Ms. Newman to pay Ms. Cera a total of \$2,242.83, broken down as follows:

- a. \$1,989 for net rental income,
- b. \$203.83 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$50 in CRT fees.

46. Ms. Cera is entitled to post-judgment interest, as applicable.

47. I dismiss Ms. Cera's remaining claims.

48. This is a validated decision and order. Under CRTA section 58.1, 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.

Deanna Rivers, Tribunal Member

¹ *Anderson v. Double M. Construction Ltd.*, 2021 BCSC 1473.

² *Midwinter v. The Owners, Strata Plan BCS 1347*, 2023 BCCRT 1117.

³ *Redfern Resources Ltd. (Re)*, 2012 BCCA 189, and *Fairchild Developments Ltd. v. 575476 BC Ltd.*, 2020 BCCA 123.