Civil Resolution Tribunal

Date Issued: March 29, 2018

File: SC-2017-004187

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hilton v. Gloag*, 2018 BCCRT 102

B E T W E E N :

Stephanie Hilton

APPLICANT

A N D :

Rochelle Gloag

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Amy J. Peck

INTRODUCTION

1. The applicant, Stephanie Hilton, and the respondent, Rochelle Gloag, were co-tenants on a commercial lease for premises in North Vancouver. That co-tenant relationship broke down and the respondent took over the commercial lease on her own. The applicant wants the respondent to pay her money for credits to the landlord under the lease that the applicant paid a share of, and for unreturned

personal items left at the premises. She also makes claims for travel time and business losses, and for reimbursement of her tribunal fees.

2. The respondent denies that she owes the applicant any money. Further, she claims that the applicant's actions caused her loss and damage that would offset any amounts that the respondent may otherwise owe the applicant. The respondent did not bring a counterclaim in this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness.

4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. No party requested an oral hearing.

5. The tribunal 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. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate. I did not find it necessary to ask any additional questions of any parties or witnesses.

6. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:

   (a) order a party to do or stop doing something;

   (b) order a party to pay money;

(c) order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. Deciding the issues in this dispute requires me to answer the following questions:

(a) What was the parties' agreement about sharing costs under the lease?

(b) Should the respondent pay to the applicant any part of the original security deposit or credit granted by the landlord for March 2018 rent?

(c) Should the respondent pay to the applicant any amount for personal items the applicant was not able to remove from the premises?

(d) Should the respondent pay to the applicant any amount for travel time or loss of business related to the dispute?

(e) Is the respondent entitled to any credit, for loss or damages to the premises caused by the applicant or otherwise?

EVIDENCE AND ANALYSIS

8. While the parties disagree about what the documents show, there was no dispute about the truth or accuracy of the documents presented by either party.

9. The applicant and the respondent, as co-tenants, entered into a commercial lease dated February 17, 2017 (the lease) for premises in North Vancouver (the premises). The landlord used a property management company to deal with the premises.

10. The relevant provisions of the lease are the following:

(a) The applicant and the respondent are referred to jointly as the "Tenant".

(b) The first day the tenant could occupy the premises was March 1, 2017 and the term of the lease was three years (Section 1.1(g)).

(c) The tenant was required to make a $2,127.33 security deposit. The landlord would apply part of the deposit against May 2017 rent and hold the remaining part as security until the end of the lease (Section 1.1(j)).

(d) If the landlord agreed to any transfer of the tenant's interest, the landlord would prepare the legal documentation and the tenant would pay for it, at the landlord's request (Section 13.3).

(e) The landlord granted three months of free rent: March 2017, April 2017 and March 2018 (Schedule H, Section 4). The respondent confirmed in an email dated August 15, 2017 that the landlord had granted three months of free rent in exchange for the tenant paying for certain improvements to the premises.

11. The respondent submitted a March 29, 2017 email from the applicant that included a spreadsheet. The spreadsheet lists various lease-related costs and which of the co-tenants paid for them. That spreadsheet shows a credit to the applicant for "DEPOSIT AND FIRST MONTHS RENT" in the amount of $2,127.33. The spreadsheet also shows payments made by the respondent to the applicant to reimburse the applicant for the respondent's half of the extra costs that the applicant paid. The spreadsheet shows a total balance owing from the applicant to the respondent of $21.91 as of that date. The respondent did not claim that that credit was still owing to her. The applicant did not deny the truth of this spreadsheet and I accept it as presented.

12. Around the summer of 2017, the applicant and the respondent agreed that the respondent would take over the lease as sole tenant. The property manager had a lease amending agreement prepared to make that change.

13. For the purposes of this dispute, the relevant provisions of the lease amending agreement are the following:

(a) The respondent would be the only tenant under the lease as of September 1, 2017 (Section 1).

(b) Before September 1, 2017, one of the co-tenants would pay to the landlord $1,264.43 to top up the security deposit for the premises. The landlord would add that payment to the $1,022.34 being held at that time as a security deposit, for a total security deposit of $2,286.77 (Section 4). There was no evidence as to why the retained security deposit was less than half of the original deposit. Given that there is no contradictory evidence before me, for the purposes of this decision I find that the retained amount of the security deposit was $1,022.34.

14. Based on the evidence before me, I find that the cost to prepare the lease amending agreement was $375 plus GST, for a total of $393.75. I find that the respondent paid this cost in full.

15. I find that on August 12, 2017, the applicant's key would not lock the exterior front door as she was leaving the premises. A property manager representative paid to repair the exterior lock later that day. A property manager incident report shows that the respondent attended the premises that evening and had the locks to the interior door of the premises changed at that time, at her cost.

16. On August 31, 2017, the applicant attempted to enter the premises to remove some personal items. The applicant's keys to the premises would not work on that date. The applicant emailed the respondent that afternoon to say that she wanted to retrieve a microwave, which elsewhere she acknowledges she obtained for free, and some stationary. The applicant had removed some larger belongings from the premises earlier in August.

17. The respondent says that she attended the premises on August 31, 2017 to allow the applicant access. However, by the time she arrived the applicant had already left. She says that she left a box of the applicant's items near the door for several weeks but they were not retrieved. The respondent does not say that she contacted the applicant to let her know that the items were available.

18. The respondent also says that the applicant damaged the premises in the process of removing her items. She submits that the applicant damaged drywall by removing a TV, caused water damage to ceiling tiles, and damaged an electrical socket. The respondent submitted a photo showing some small holes in the drywall at the premises. She also submitted an email dated August 15, 2017 where the applicant acknowledges a hole in the drywall from mounting a TV. Further, the respondent submitted an email quote from Powell Contracting, quoting $600-800 for “drywall repair, paint wall; Replace electrical socket ripped out of wall; Replace and paint one acoustic ceiling tile”.

Issue 1: What was the parties’ agreement about sharing costs under the lease?

19. Most commercial relationships are governed by a contract. A contract does not need to be in writing. It may be more difficult to determine what the exact terms of an oral contract are, since the terms are not written down. However, oral contracts are enforceable in law.

20. The contract in issue here is the oral contract between the applicant and the respondent about each of their responsibilities for expenses under the lease as co-tenants. While there had been some discussion about writing the deal between them down, the co-tenants never did so.

21. The parties presented little evidence about the terms of the oral contract between them. However, one piece of evidence I find persuasive is the March 29 spreadsheet. I find that spreadsheet shows that the parties agreed that all expenses incurred under the lease were to be shared equally between them.

Issue 2: Should the respondent pay to the applicant any part of the original security deposit or credit granted by the landlord for March 2018 rent?

22. The next question is how the credits to the landlord under the lease should be dealt with once the parties were no longer co-tenants.

23. The applicant claims that the respondent should pay her for half of the original security deposit being held by the landlord as well as her part of the March 2018 rent credit. She says that the deposit will be returned to the respondent in full at the end of the lease. She further says that the rent was reduced in exchange for performing tenant improvements, which have been already paid for in full and the respondent continues to benefit from them.

24. The respondent says she should not be held responsible for costs paid to a third party, in this case the landlord. She points to the fact that there are no documents that say she owes the applicant these costs. She also disputes the fact that the landlord offered free rent in exchange for tenant improvements and claims it was an enticement for them to enter a three year lease. She claims she has had to incur a significant financial burden in taking over the lease on her own.

25. I have already found that the parties agreed that all costs under the lease were to be equally shared and that all expenses recorded on the March 29 spreadsheet were, in fact, contributed to equally by the parties. Therefore, I find that the applicant and the respondent should be considered to have equally contributed to the security deposit and the March 2018 rent credit.

26. When the respondent agreed to take over the lease as sole tenant, she agreed to take on all of the rights and responsibilities under the lease. While the respondent mentions the significant financial burden of doing so, the fact is she agreed to take the lease over, including those financial burdens. When she took over, the respondent also became solely entitled to all of the benefits under the lease. One of the benefits she assumed was a credit for the remaining $1,022.34 of the security deposit. While she had to top up that deposit to remain as a tenant on her own, that was one of the responsibilities she accepted as sole tenant. The other portion of the security deposit was used by the landlord to pay May 2017 rent, when the parties were still co-tenants under the lease and jointly benefiting.

27. There are no documents or other evidence that show what the applicant and the respondent intended to do with the credits if they ever decided not to be co-tenants

anymore. It was not something they appear to have considered so they did not have an agreement about that issue. However, a person can be required to reimburse another person in law even when there is no agreement between them about the costs in question.

28. The law recognizes a situation called unjust enrichment, which is when a person claiming a loss can show three things:

    (a) Another party has obtained a benefit as a result of something the claiming party has done;

    (b) The claiming party can show that they have suffered a loss related to the benefit the other party received; and

    (c) There is no reason in law for why the party should be able to keep the benefit in the circumstances. These circumstances can include asking what the reasonable expectations of the parties would have been had they thought about what to do about the benefit, even if they did not put their minds to it or have an agreement about it. (*Pettkus v. Becker*, 1980 CanLII 22 (SCC))

29. Where there is a case of unjust enrichment, the person who suffers the loss can be awarded damages to compensate them for that loss.

30. In this case, I find it would unjustly enrich the respondent to have her not repay to the applicant shared expenses under the lease. The respondent has obtained a benefit in that, as sole tenant, she gets full credit for the remaining part of the original security deposit and the March 2018 rent credit. The applicant paid for half of those costs so has suffered a loss directly related to that benefit. Finally, there is no reason that the respondent should be able to keep the benefit without paying compensation. I find that the reasonable expectations of the parties if they had thought about it would have been that if one co-tenant took over the lease, that co-tenant would repay to the other co-tenant the amounts under the lease that the departing tenant was no longer going to benefit from.

31. Therefore, I find the applicant is entitled to her half of the retained security deposit and the March 2018 rent credit.

32. With respect to the security deposit, the amount retained is $1,022.34 and the applicant is entitled to half, or $511.17. Because the rest of the security deposit was used to pay rent while the parties were still co-tenants, I find that they benefitted equally from that amount at that time and the applicant is not entitled to any credit for any part of that amount.

33. As for the March 2018 rent, there was no specific evidence as to the amount of rent that would be payable for that month. I find it reasonable to decide that the amount payable for March 2018 rent is $1,104.99. I come to this amount by taking the original security deposit of $2,127.33 and subtracting the amount of the retained security deposit of $1,022.34. That amount – $1,104.99 – is what the landlord took out of the security deposit for May 2017 rent. In the absence of specific evidence, I find that the amount payable for March 2018 rent would be the same as that payable for May 2017. Therefore, the applicant is entitled to a credit of $552.50 for her half of the March 2018 rent.

34. I do not accept the respondent's argument that the free rent for March 2018 was granted in exchange for the co-tenants signing a three year lease. The respondent's own email confirms that the landlord gave them three free months of rent in exchange for improvements to the premises paid for by the co-tenants.

Issue 3: Should the respondent pay to the applicant any amount for personal items the applicant was not able to remove from the premises?

35. The applicant was a co-tenant under the lease until September 1, 2017. Until that date she was entitled to full access to the premises. By changing the locks and failing to provide the applicant with a new key or some other reasonable way to access the premises, the respondent denied the applicant her rights as co-tenant.

36. The only damages the applicant is claiming as a result of her being locked out of the premises is the value of the personal items that she was unable to retrieve. She did not ask that any specific items be returned to her. The applicant claims between $1,800 and $3,500 in total for personal items, office supplies, travel time and loss of business. She did not break out how much of her claim related to which category or provide any evidence of the value of any specific items she was unable to recover.

37. Since the applicant acknowledges that she had taken larger items from the premises earlier in August 2017, and attended the premises on August 31, 2017 to retrieve stationary and a free microwave only, I find that the value of the items that remained is negligible. I award her a nominal amount of $50 for those items.

Issue 4: Should the respondent pay to the applicant any amount for travel time or loss of business related to the dispute?

38. The applicant made a claim for travel time and loss of business in her dispute notice. However, she did not present any evidence or submissions about why the tribunal should award her damages for those claims. Those types of claims require specific arguments and evidence to prove. The tribunal generally does not make awards to compensate parties for the time spent dealing with the dispute, and there is no reason to do anything different in this case. I find the applicant is not entitled to any compensation for travel time or loss of business.

Issue 5: Is the respondent is entitled to any credit, for loss or damages to the premises caused by the applicant or otherwise?

39. The respondent argued that she should get a credit of between $600 and $800 for damage done to the drywall, the ceiling and an electrical socket at the premises. She also claims a credit for the applicant's damage to the interior lock at the premises, which she paid to repair.

40. There is insufficient evidence for me to find that the applicant caused any damage to the premises that the respondent should get a credit for. While the applicant did acknowledge some damage done to the drywall due to removing a TV in an email, she did not accept responsibility for that damage. In any event, in the circumstances and based on the photo, I find this damage to be in the realm of regular wear and tear. The respondent did not prove that the applicant caused other damage to the ceiling and the electrical socket or to the interior locks at the premises that she changed. I decline to credit the respondent for any of these costs.

41. The respondent is, however, entitled to a credit of $196.88, which is one half of the $393.75 she paid to the landlord for the cost of preparing the lease amending agreement. The cost of the amending agreement was payable to the landlord under the terms of the lease. Since the applicant was a co-tenant when that cost was incurred, it is a cost that the applicant must share equally with the respondent.

42. In summary, I find that the respondent must pay to the applicant a total of $916.79 in damages, being:

- $511.17 for her half of the remaining security deposit, plus
- $552.50 for her half of the March 2018 rent credit, plus
- $50 in nominal damages for the items she was not able to remove from the premises on August 31, 2017, minus
- the $196.88 credit for the applicant's half of the cost to prepare the lease amending agreement.

ORDERS

43. I order that the respondent pay to the applicant a total of $916.79 in damages.

44. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I order the respondent to reimburse the applicant for tribunal fees of $125.

45. The applicant is also entitled to pre-judgment interest in the amount of $4.80 under the *Court Order Interest Act*. Interest on the award is calculated from September 1, 2017, when the applicant became entitled to have the respondent pay her the amounts in question. The applicant is also entitled to post-judgment interest.

46. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

47. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Amy J. Peck, Tribunal Member