



Civil Resolution Tribunal

Date original decision issued: April 13, 2018

Date of Amended Decision: April 19, 2018

File: SC – 2017-005583-A1

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Man v. Kennedy*, 2018 BCCRT 132

B E T W E E N :

Matthew Man

APPLICANT

A N D :

Susan Kennedy

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. On July 1, 2017 the applicant, Matthew Man, moved into a room that he had rented in the home owned by the respondent Susan Kennedy, who also lived in the home. On July 11, 2017 the applicant moved out of the respondent's home. This dispute relates to what happened on July 11, 2017 and whether the applicant

was wrongfully evicted. The respondent has not filed a counterclaim. Both parties are self-represented.

JURISDICTION AND PROCEDURE

2. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. 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 submission because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. 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.
5. Much of the evidence in this dispute amounts to a "he said, he said" scenario with each party calling the other a liar about certain alleged facts. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. As noted in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (BCCA), the assessment of what is the most likely account depends on its harmony with the rest of the evidence. In considering what is most likely to be the truth, I consider what "a practical and informed person would readily recognize as reasonable in that place and in those conditions". In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and

submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court also recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.
7. As discussed further below, the respondent lived in her home while the applicant was a tenant, with the parties sharing a kitchen and/or bath. Accordingly, under section 4(c) of the *Residential Tenancy Act* (RTA), the RTA does not apply to this dispute. As such, the Residential Tenancy Branch does not have exclusive jurisdiction. The tribunal can therefore hear this dispute as a claim for damages.

ISSUES

8. The issues in this dispute are:
 - a. Was the applicant wrongfully evicted?
 - b. Is the applicant entitled to a refund of half a month's rent?
 - c. Is the applicant entitled to a refund of his \$350 security deposit?
 - d. Is the applicant entitled to a reimbursement of a \$400.00 hotel bill?
 - e. Is the applicant entitled to a reimbursement of \$30.00 for the loss of his groceries?

- f. Is the applicant entitled to an award of \$350.00 for pain and suffering?

EVIDENCE AND ANALYSIS

9. Both parties submitted a large volume of evidence including voice recordings, reference letters, documentary evidence, and written evidence. I have reviewed all the evidence and have considered all relevant evidence. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities.
10. On June 30, 2017 the applicant rented a room in the respondent's home, and the applicant moved in on July 1, 2017.

Payment of rent and deposit

11. Both parties presented copies of a receipt to show the status of the payment of rent and the deposit. The applicant says that this receipt shows he paid rent and a deposit, in cash, on June 30, 2017. The respondent states that the receipt was altered but does not say how, and does not say that the rent or deposit was not paid.
12. I find that on June 30, 2017, the applicant paid the respondent \$700 for July rent and a \$350 security deposit. Both parties acknowledged the payment by signing a receipt that says "(cash)" and "Paid in full". Further, the respondent acknowledges the deposit in her evidence, because she says she refused to return it to the applicant if he moved out of the home without proper notice.

Was the applicant evicted?

13. I prefer the applicant's evidence. The respondent's evidence lacked detail and is inconsistent with the supporting evidence. In contrast, the applicant's¹ evidence is consistent, detailed, and supported by the evidence.
14. On July 11, 2017, the respondent was upset about her dog choking on chicken bones in the applicant's room and confronted him about it. Later that evening, the

applicant asked the respondent if he would receive his damage deposit back if he were to leave before month's end. The respondent informed the applicant she would not return the damage deposit if the applicant left without proper notice. The parties' accounts diverge at this point. The applicant says that after he spoke with the respondent, he was physically blocked from moving around the house and was berated and bullied into leaving the house. The respondent says the applicant packed up his things and left voluntarily.

15. Based on the voice recordings in evidence taken on the night in question, I find that the respondent become angry at the applicant's suggestion that he would consider leaving her home and forced the applicant to leave right away. I find the respondent evicted the applicant. Whether that eviction was wrongful is discussed below.

Breach of contract

16. Based on the evidence before me, there is no formal written rental agreement between the parties. However, a formal written agreement is not necessary to bind parties into an agreement and for the principles of contract law to apply.
17. In contract law, certain rights and responsibilities bind parties. These rights and responsibilities are either stated in the contract and or arise out of the law. The question to be answered is whether the respondent breached the parties' agreement by evicting the applicant?
18. I find that the respondent breached the terms of the agreement by evicting the applicant. My further reasons follow.
19. The parties' signed rental receipt says on the top "One Month to Month Basis". No notice period is noted on the receipt or any other terms of the contract. However, the respondent says that she told the applicant she would not return the applicant's deposit if he left without proper notice. I find that a reasonable notice period was implied in the parties' agreement, which applies to both parties giving

notice of ending the tenancy. As set out above, I find the applicant was evicted, without notice.

20. In certain circumstances, eviction without notice is reasonable.
21. However, I find that it was not reasonable for the respondent to evict the applicant on the night of July 11, 2017. The respondent says she was upset about her dog choking on a bone in the applicant's room and about the applicant being messy. But the respondent has not provided any evidence that the applicant posed an immediate threat to the safety of the respondent, her dog, or her home. The respondent has not provided any evidence that would lead me to conclude that it was reasonable for her to immediately evict the applicant. Based on the evidence before me, including the voice recording of the respondent's verbal attacks on the applicant on the night in question, I find the applicant has proven the eviction was unreasonable.
22. The respondent says that the applicant did not follow the Guest Guidelines document. In her evidence, the respondent says that the Guest Guidelines are just that, guidelines and not rules. The respondent says that the Guest Guidelines are reviewed with guests as they arrive, and are simply courtesies for other guests. She further says that the Guest Guidelines are not an agreement and no signatures are required. Given the respondent's own evidence on this matter, it is clear that a violation of the Guest Guidelines, like eating in your room, is not a breach of the agreement between the parties. The applicant eating in his room and being messy is not a reasonable reason to immediately evict the applicant, given he was given no opportunity to correct the alleged breach of the guidelines.
23. I find the respondent should have given the applicant reasonable notice to vacate the room in her home.

Return of rent

24. The applicant lived in the respondent's home for 10 nights. I find that the respondent must return to the applicant rent for the amount of nights for which the he was not allowed to use the room. The applicant paid the respondent \$700 to live in her home for the month of July. As July has 31 days, the respondent owes the applicant a refund for 21 days. This amounts to \$474.19.

Return of deposit

25. A deposit in a rental agreement is generally taken either for security for potential damage or security for unpaid rent.
26. The respondent has not provided any evidence that there was damage to the room or common property. Unpaid rent is not an issue in this dispute.
27. I find the respondent must return the entire damage deposit to the applicant, in the amount of \$350.

Hotel room

28. The applicant tried to mitigate his damages by sleeping in a park overnight rather than renting a hotel room, but it was too cold. When he found that this was not a viable solution, he rented a hotel room. The applicant had also started a new job and presumably did not have the time to look for accommodations during working hours. I find it was reasonable that the applicant required a two-night hotel stay, which cost the applicant \$398.
29. The respondent knew or should have known that the applicant did not have any other accommodations available to him if he was evicted. The respondent has not submitted any evidence that she attempted to assist the applicant in mitigating his damages.

30. I find that the respondent must compensate the applicant for his hotel room charges, in the amount of \$398.

Groceries

31. The Applicant has not provided any evidence about his groceries, and I find the applicant has therefore not proven this claim. I therefore dismiss the applicant's claim for \$30 in groceries.

Pain and suffering

32. The respondent says she has been renting rooms in her home for 20 years and is an experienced landlord. The applicant says that this incident was stressful for him and gave him a tough start at his new job.

33. Given the respondent's experience as a landlord, she knew or ought to have known that evicting the applicant without any notice would be stressful. She knew or should have known that looking for new accommodations on an urgent basis would be difficult for the applicant.

34. However, although I find this incident was stressful for the applicant, I do not find there is enough evidence to support that the applicant should receive an award for pain and suffering. The applicant was quick to find temporary accommodation, did not suffer any negative consequences at work, and has not provided any medical evidence of mental or physical pain and suffering. I dismiss the applicant's claim for \$350 for infliction of emotional distress.

Other

35. The respondent has provided a large amount of evidence about harm she has suffered as a result of her dispute with the applicant. However, the respondent has not filed a counterclaim so I cannot make any determinations on the issues she has raised.

Tribunal fees

36. 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 see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

37. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,353.68, broken down as follows:
- a. \$350 as reimbursement for the security deposit;
 - b. \$474.19 as a reimbursement for rent for unused nights in the respondent's home;
 - c. \$398 as a reimbursement for the hotel costs;
 - d. \$6.49 in pre-judgment interest under the *Court Order Interest Act*, and
 - e. \$125 in tribunal fees.
38. I dismiss the balance of the applicant's claims.
39. The applicant is entitled to post-judgment interest, as applicable.
40. 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.
41. 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.

Salima Samnani, Tribunal Member

¹ Amendment Note: Amendment made to correct an inadvertent error in referring to the applicant as the respondent.
