



Civil Resolution Tribunal

Date Issued: May 11, 2018

File: SC-2017-003867

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lindquist v. Whyte*, 2018 BCCRT 181

BETWEEN:

Darlene Lindquist

APPLICANT

AND:

Mark Whyte

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about whether the respondent Mark Whyte owes money to his former roommate, the applicant Darlene Lindquist, for outstanding utility bills.
2. It is undisputed that around August 2015, the parties verbally agreed that the respondent would share the applicant's home, free of rent. The respondent's

bedroom was in the applicant's basement, but he shared her kitchen. It is also undisputed that in exchange, they agreed he would provide some help around the house and would pay certain utility bills (the Bills).

3. It is also undisputed that the respondent paid the Bills up until April 2017, but then stopped even though he continued to live in her home until July 2017. The respondent says the parties' verbal agreement changed in January 2017, to the effect that he could pay "as much as I could when I could". The respondent says that when the applicant took a payment from him, that shows her acceptance of the new rental agreement established at that time. I disagree, and for the reasons set out below I find in favour of the applicant.
4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. Neither party requested an oral hearing.
7. 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.

8. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
9. I note the *Residential Tenancy Act* (RTA) does not apply to this dispute. Section 4(c) of the RTA says it does not apply where the homeowner shares a kitchen or bath with the tenant. While the applicant bought a bar fridge for the respondent's use in his basement suite, he did have the use of her kitchen as his suite did not have one. Therefore, I find that the tribunal, rather than the Residential Tenancy Branch, has jurisdiction over this dispute.
10. I also note the respondent submits that the applicant owes him money including for alleged help with her mortgage. He also says she owes him for things missing after his belongings were packed up and removed from the applicant's home. In submissions, the respondent appears to make a defamation claim and a wrongful eviction claim. The applicant denies all of this. None of these things are before me in this dispute and I make no decision about them. I say this because the respondent did not file a counterclaim against the applicant, which he advised the tribunal case manager he did not want to do because the amount he sought exceeded the tribunal's \$5,000 monetary limit and he did not want to abandon the excess. I find the respondent's desired claims are distinct from the applicant's claim for payment of the Bills and there is no reason for me not to proceed to resolve the applicant's dispute. Subject to the running of time set out in the *Limitation Act*, nothing in this decision prevents the respondent from pursuing his claims, either with the tribunal in a separate dispute if the claim is within the tribunal's jurisdiction, or, in court.

ISSUES

11. The issues in this dispute are a) whether or to what extent the respondent owes the applicant for the outstanding utility Bills, and b) is the applicant entitled to \$40 for cleaning the respondent's basement suite.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. It is undisputed that the respondent agreed to pay these Bills: BC Hydro and Fortis, and \$35 towards the Shaw internet and \$35 towards the Bell TV bills, given his use of those services. The outstanding Bills claimed by the applicant all arise after April 1, 2017 and were paid by the applicant to the utilities in May, June, or July 2017.
14. The respondent says that he became unemployed on January 1, 2017 and at the applicant's urging took work that paid only \$350 a week. The respondent says that this is when their original agreement that he would pay the Bills monthly was changed to a mutual agreement that he would "pay as much as I could when I could".
15. Based on the applicant's evidence, and the respondent's submission set out above, I find that in April 2017 the applicant kept track of the Bills so that the respondent would pay her in full when things got better for him. I accept she reasonably trusted him to do so in a timely way, given their history of living together and his past payments.
16. The respondent submits that on May 1, 2017 he was hired at a hardware store and that within that month he would have been able to pay the remainder of the arrears in full. His next submission is that the applicant pursued what he felt was a wrongful eviction, and as noted above he moved out on July 10, 2017. I infer he suggests that his obligation to pay the Bills ended when the applicant asked him to move out. I disagree. The Bills represent services provided before the respondent moved out. Nothing about his moving out changes that debt obligation. As noted above, the respondent's issues giving rise to a potential counterclaim are not before me in this dispute.

17. I do not agree that the applicant's decision to press the respondent for payment of the Bills was a breach of their agreement, as submitted by the respondent. While she may have exercised some leniency in the past, that does not necessarily mean she accepted that the respondent could indefinitely put off payment of the Bills. Based on the overall evidence before me, I do not accept that the applicant's leniency means a fundamental term of their agreement changed to the respondent being able to essentially reduce the debt owing to whatever he felt able to pay. In any event, the respondent has provided evidence that he has not since been able to fully repay the Bills. As noted above, on May 1, 2017 he expected to be able to fully pay the outstanding Bills by the end of that month and that was over a year ago.
18. I also do not accept the respondent's submission that by accepting his payments that the applicant was agreeing to reduce the debt to the amount paid. I find the more likely scenario was that the applicant took whatever payment the respondent was prepared to give her at the time, as something was more than nothing.
19. I find the respondent is responsible to pay the outstanding Bills. I turn then to the amount of the applicant's claims.
20. The \$490.94 in outstanding Bills claimed do not include the \$300 the respondent paid towards the Bills on June 12, July 3 and 8, 2017. These amounts were not particularly disputed, and I note the claimed sum reflects the applicant's correction of an earlier mathematical error. I find the respondent must pay the applicant \$490.94 for the outstanding Bills.
21. The applicant also claims \$40 for her time spent cleaning the respondent's basement room after he moved out. The applicant says the respondent never returned to clean his area in her basement after his movers took his belongings. The respondent says that the applicant cleaned before he could return after work to do so, which the applicant did not address in her final reply. In all of the circumstances, I dismiss this claim.

22. In summary, I find that the respondent must pay the applicant \$490.94 for the outstanding Bills. I find the applicant is entitled to interest on the \$490.94 under the *Court Order Interest Act* (COIA), calculated from July 31, 2017. Overall, I find this is the most reasonable date in the circumstances. The applicant's \$40 cleaning claim is dismissed.
23. In accordance with the tribunal's rules, I find the applicant is also entitled to reimbursement of the \$125 she paid in tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

24. Within 30 days of this decision, I order the respondent Mark Whyte to pay the applicant Darlene Lindquist a total of \$619.49, broken down as follows:
 - a. \$490.94 as payment for the outstanding utility bills,
 - b. \$3.55 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
25. I dismiss the applicant's claim for \$40 for cleaning the respondent's suite. The applicant is entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

Shelley Lopez, Vice Chair