



Civil Resolution Tribunal

Date Issued: September 17, 2018

File: SC-2017-006594

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Weise v. White*, 2018 BCCRT 527

BETWEEN:

Doerte Weise

APPLICANT

AND:

Martin White

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about the return of a security deposit. The applicant, Doerte Weise, rented accommodation in the respondent's house. She says that after she moved out, the respondent kept \$196 of her \$400 security deposit. She seeks an order that he refund the \$196.
2. The respondent, Martin White, says he was entitled to keep the \$196 because the applicant left her room and the shared bathroom a mess, and damaged a carpet.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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.

Tribunal Jurisdiction Over Residential Tenancies

8. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch. However, 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, as in this case. For this reason, I find that the tribunal can hear this dispute under its small claims jurisdiction, as set out in section 3.1 of the Act.

ISSUES

9. The issue in this dispute is whether the respondent must refund the applicant's remaining \$196 security deposit.

EVIDENCE AND ANALYSIS

10. 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.
11. The applicant moved into the respondent's home in May 2017. She paid rent of \$800 per month, and paid a \$400 damage deposit upon moving in.
12. The respondent texted the applicant on September 29, 2017. He asked her to clean her room and bathroom before she moved out, and also to vacuum the living room and kitchen. He said the house was not very clean when he was last there.
13. The respondent says the applicant left a mess, and permanently stained a carpet. In an October 14, 2017 letter to the applicant, he said he had to get the carpet

cleaned due to stains she created, and had to have cleaning done as she failed to clean the bathroom.

14. The applicant says she left the home clean and tidy, and in the same condition as when she moved in. She denies staining the carpet. She also says the respondent failed to do a move-out inspection.
15. The RTA requires move-in and move-out inspections before a landlord can keep all or part of a damage deposit. However, as explained above, the RTA does not apply to this dispute. Rather, this dispute is governed by the general principles of contract law.
16. Although the respondent issued a receipt for the damage deposit, the parties had no written agreement specifying the terms of that deposit. However, since it was called a “damage deposit” on the written receipt, I find that it was reasonable for the respondent to retain all or part of the deposit in the event of damage.
17. While the applicant says she left the rooms in the same condition as when she arrived, I find she has not proven that assertion. The photos provided in evidence by both parties show that when she left, the bedroom carpet was stained and the respondent provided an email from the carpet cleaning company confirming that one stain could not be removed. The applicant has no provided no evidence, such as photos, to prove that the carpet was already stained when she arrived. Again, I note that the burden of proof in this dispute is on the applicant.
18. I am also persuaded by the May 3, 2018 email from AR, who said the bathroom was not clean, and that she spent 2 hours cleaning it. I find the bathroom photos provided by the applicant do not contradict AR’s evidence, as they show some white stains on the floor, rug, and countertop, and rug, as well as items laying on the floor by the shower. This indicates that the bathroom had not been thoroughly cleaned, despite the respondent’s specific request on September 29, 2017.
19. The applicant says the respondent’s carpet cleaning invoice is not sufficiently detailed. I disagree, and find it persuasive, particularly in combination with the

provided emails from the carpet cleaning company. I also find that \$131.25 for carpet cleaning was reasonable in the circumstances.

20. In summary, I find the applicant has not met the burden of proving that she is entitled to a refund of the outstanding \$196 damage deposit. Instead, I find it was reasonable for the respondent to retain that amount in the circumstances, to compensate for carpet cleaning, bathroom cleaning (which AR said she traded for other labour from the respondent), and a permanent carpet stain.
21. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss her claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

22. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member