Date Issued: December 13, 2018

File: SC-2017-006267

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Boroojeny v. Turanski*, 2018 BCCRT 848

B E T W E E N :

Mojegan Sadeghian Boroojeny

APPLICANT

A N D :

Gail Turanski

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, Mojegan Sadeghian Boroojeny, rented a commercial space from the respondent, Gail Turanski. The applicant says the respondent failed to return her $1,312.50 rental deposit at the end of the tenancy, and seeks an order for the return of the deposit.

2. The respondent says the applicant is not entitled to a deposit refund because she did not leave the property in its original state, and also did not pay a municipal sewer and water bill for $194.68.

3. The 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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.

ISSUES

8. The issue in this dispute is whether the applicant is entitled to a return of the $1,312.50 commercial rental deposit.

EVIDENCE AND ANALYSIS

9. 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.

10. The parties agree that the applicant's lease ended on July 31, 2017, and that they met at the rental premises on August 1, 2017. The applicant says the respondent raise no issues about the property's condition at that time. The applicant says they agreed that the rental deposit would be returned after the new tenants took possession of the applicant's business and equipment. The applicant says the respondent subsequently refused to return the damage deposit.

11. The respondent says she told the applicant on August 1, 2017 that the yard looked shabby. She also says she later found some broken siding on the building, that she had not seen at the time of the inspection. The respondent admits she never informed the applicant about the outstanding water bill of $194.68, which was sent to the respondent because the applicant no longer occupied the premises. The respondent says she planned to absorb that cost, but keep the damage deposit.

12. The applicant relies on the rental deposit provisions of the *Residential Tenancy Act* (RTA). Because this was a commercial tenancy, the RTA does not apply. Rather, all terms of the tenancy are governed by the terms of the written lease agreement (lease) between the parties.

13. The lease is very detailed, but does not mention a damage deposit. However, the parties agree that the applicant paid a deposit of $1,312.50 when she signed the lease in June 2013, and that the respondent did not return it after the tenancy ended. Paragraph 5.18 of the lease says that at the end of the tenancy, the applicant must surrender the premises "in good and substantial repair and clean and tidy condition."

14. The respondent says the applicant neglected the yard. She says there were dead weeds and grass, and the sidewalks were covered with overgrown weeds. The applicant denies this, and says the building exterior and yard were in worse condition when she rented the premises in June 2013, as they had been neglected. The applicant says that before opening her restaurant business she had to pressure wash the whole building, and also remove garbage, cans, and bottles from the yard. She says the garden was in "bad shape", and had a caterpillar infestation.

15. Based on the evidence before me, I find the weight of the evidence favours a conclusion that the applicant did not leave the building or yard in worse condition than when she took occupancy. As noted by the applicant, the "before" photos provided by the respondent were taken after the applicant moved in and opened her business. While the "after" photos show some dead grass and weeds, they are not so extreme that they breach the requirement to leave the property in clean and tidy condition. I find that the respondent's photos do not support a conclusion that the property was not generally in "good and substantial repair and clean and tidy condition". The parties agree that the respondent mentioned during the inspection that the yard looked shabby. However, the text messages and emails in evidence show that she did not inform the applicant about her intention to retain the damage deposit, and therefore did not give the applicant the opportunity to rectify the situation.

16. For these reasons, I find the respondent was not entitled to retain any portion of the damage deposit due to condition of the yard.

17. The respondent provided a photo showing a small area of damaged siding on 1 lower corner of the building, and a repair quote for $250 plus GST. Paragraph 6.3 of the lease says the landlord will repair and maintain the outer walls, and cover all costs thereof. Paragraph 5.9 says the outer walls shall be the landlord's responsibility to maintain, but the tenant shall pay the landlord the cost of repairs to the outer walls occasioned by the abuse of the premises by tenant.

18. The applicant admits she knew the wall had sustained damage. She says it happened a long time ago, and she forgot about it. There is no evidence before me about how the damage occurred. Based on the photo, I find it does not suggest abuse, but typical wear and tear. For that reason, I find that under the terms of the lease, the respondent is responsible to pay for this outer wall repair and is not entitled to retain any portion of the damage deposit to cover that repair.

19. In her submissions, the applicant agrees that she is liable for the $194.68, which she did not know about before she filed the dispute. I agree, and find that this amount should be subtracted from the damage deposit. I therefore order the respondent to pay the applicant $1,117.82 as a refund of the damage deposit. The applicant is also entitled to pre-judgment interest on this amount from August 2, 2017, under the *Court Order Interest Act* (COIA).

20. The applicant claims $75 for tribunal fees, and the respondent, who paid the tribunal decision fee, claims $50. 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. The respondent relies on the indemnity provisions of the lease, which state that the tenant will indemnify and save harmless the landlord from any and all costs, claims, suits, expenses and damages. In these circumstances, where I have found the applicant to be largely successful, I find that the Act overrides the lease provisions. In accordance with section 49 and the tribunal's general practice, I find the applicant is entitled to reimbursement of $75. For the same reason, I find the respondent is not entitled to reimbursement.

ORDERS

21. I order that within 30 days of the date of this order, the respondent pay the applicant a total of $1,210.02, broken down as follows:

    a. $1,117.82 as a refund of the damage deposit,

    b. $17.20 in pre-judgment interest under the COIA, and

    c. $75 for tribunal fees and dispute-related expenses.

22. The applicant is entitled to post-judgment interest, as applicable.

23. 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.

24. 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.

Kate Campbell, Tribunal Member