Civil Resolution Tribunal

Date Issued: December 14, 2018

File: SC-2018-003659

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nguyen v. Martin*, 2018 BCCRT 853

B E T W E E N :

Hai Ly Nguyen

APPLICANT

A N D :

Vanessa Martin

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. This dispute is about the return of a rental deposit. The applicant, Hai Ly Nguyen, rented a room from the respondent, Vanessa Martin. The applicant says the respondent refused to return the $700 security deposit at the end of the tenancy. The applicant agrees to some deductions from the deposit for a container, a

mattress cover, and some food. She seeks an order that the respondent return $590 of the deposit.

2. The respondent says the applicant is not entitled to any of the deposit because she moved out without providing written notice, and because she caused damage and cleaning costs in excess of the $700 deposit.

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. 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.

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 bathroom with the tenant, as in this case. As the parties in this dispute shared a kitchen, I find the dispute is within the tribunal's 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 $590 of the applicant's 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 parties agree that the applicant paid a $700 damage deposit at the beginning her tenancy in August 2017, and that she moved out on March 1, 2018. The respondent says she is entitled to keep the damage deposit because the applicant failed to give written notice of her intention to move, and because she left the space unclean and damaged items.

12. Some of the respondent's submissions to the tribunal deal with matters that occurred at the beginning of the tenancy, such as how the applicant paid the deposit, and whether the applicant ought to have signed the lease. These issues

are not determinative of whether the applicant is entitled to a damage deposit refund, so I place no weight on them.

13. The parties signed a written tenancy agreement on August 25, 2017 (agreement). This pre-printed form was prepared by the provincial government and mentions the RTA, which as previously noted does not apply to this tenancy due to the parties' shared kitchen. However, the parties agreed to the written terms of the agreement at the time they signed it, so I find it is a binding contract between them.

14. Paragraph 14(1) of the agreement says the tenant may end the tenancy by giving the landlord at least 1 month's written notice. The agreement further specifies as follows [reproduced as written]:

> A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example, if the tenant wants to move out at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

15. Paragraph 14(2) of the agreement says the notice must be in writing, must include the address of the rental unit and the date the tenancy is to end, and must be signed and dated by the tenant.

16. The applicant admits she did not give written notice, but says she gave verbal notice of her intent to move over a month before her move-out date of March 1, 2018, so the respondent is not entitled to keep the deposit on that basis. She says her verbal notice was sufficient, as the respondent demonstrated acceptance of the notice by arranging to show the room to new prospective tenants.

17. The respondent agrees that the applicant gave verbal notice in late January 2018, but says she asked the applicant to confirm in writing by the end of that month, which the applicant did not do. She said the applicant went "back-and-forth" about whether she was actually going to move out at the end of February. The respondent

says that because the applicant never provided a move-out date, it was hard to find a new tenant because she could not give a specific move-in date.

18. I find the applicant is not entitled to any refund of the damage deposit, because she failed to provide written notice, as specifically required under the agreement. This requirement of written notice was mandatory rather than optional. Even if I accepted that the applicant's verbal notice was sufficient (which I do not), she has not established that she provided the respondent with the date the tenancy would end, as required in paragraph 14(2) of the agreement. Again, I note that the burden lies with the applicant to prove her claim.

19. As I have found the applicant is not entitled to a damage deposit refund due to lack of written notice, it is not necessary to consider the parties' submissions about the condition of the rented space.

20. 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.

ORDER

21. I dismiss the applicant's claim and this dispute.

Kate Campbell, Tribunal Member