Civil Resolution Tribunal

Date Issued: January 7, 2019

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *La Cara v. Murphy,* 2019 BCCRT 17

B E T W E E N :

Eric Roger La Cara

APPLICANT

A N D :

Dawn Murphy

RESPONDENT

A N D :

Eric Roger La Cara and Mariko La Cara

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Jordanna Cytrynbaum

INTRODUCTION

1. This dispute is about a homestay agreement.

2. The applicant claims the respondent breached a homestay agreement and seeks a refund of the $1,000 deposit he paid for his son to live in the respondent's home (deposit), plus $1,000 in pre-paid rent for the month of April 2018. The respondent counterclaims against the applicant and his wife, Mariko La Cara, for additional rent totaling $1,000 and to keep the deposit.

3. The parties were 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 118 of the *Civil Resolution Tribunal 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. It must also 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 an oral hearing is not required to decide the issues in dispute.

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 make one or more of the following orders:

a. order a party to do something;

b. order a party to refrain from doing something;

c. order a party to pay money.

ISSUES

8. The issues in this dispute are:
    a. What were the terms of the homestay agreement?

    b. Is the applicant entitled to be refunded $1,000 for April 2018 rent?

    c. Is the respondent entitled to be paid additional rent totaling $1,000?

    d. Which party is entitled to the deposit?

EVIDENCE AND ANALYSIS

Evidence

9. The applicant and the respondent by counterclaim (who I will refer to as the applicant's wife) enrolled their son in high school in British Columbia and a winter club academy for the 2017 – 2018 school year. At the time, the applicant was working overseas and planned for his wife to join him. In about May 2017 they entered into an agreement with the respondent for their son to live in her home for his grade 9 year commencing September 2017 (homestay agreement). The terms of that agreement are in dispute.

10. In a civil dispute such as this, each applicant bears the burden of proof on a balance of probabilities. That means, the applicant must prove his claim and the respondent must prove her counterclaim. In these reasons, I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

11. The applicant says the respondent offered to homestay his son for a minimum 4 month term at $1,000 per month for accommodations, meals and utilities with a $1,000 damage deposit. The applicant says his wife accepted the offer on his behalf and that this forms the agreement between the parties.

12. The respondent, on the other hand, says that after having an initial exchange with the applicant, virtually all of her dealings were with the applicant's wife, and that she and the wife negotiated a different agreement. The respondent says she and the applicant's wife agreed to a 10 month homestay term at $1,000 a month. She says they also agreed to a $1,000 damage deposit that was "non-refundable", but could be applied to the last month's rent (June 2018), provided the son did not cause any damage to her home.

13. The homestay agreement ended abruptly after the applicant and his wife provided the respondent with a letter dated March 31, 2018 (letter) which stated their son would be vacating the respondent's home on April 30, 2018. The letter provided no explanation for this decision, and asked that the respondent refund the deposit by email transfer or mail. The letter concludes with "Thank you for the use of your room."

14. By email dated March 31, 2018 the applicant's wife wrote the respondent and stated that the letter was for "for our protection in case this falls under the Residential Tenancy Act. Please be advised that HomeStay and dealing with minors probably are not under Residential tenancy Act and 1-month notice is not required." I have no information about the communications that preceded this email. I infer from this email that the applicant's wife was suggesting she and the applicant were not obliged to give any notice to terminate the homestay agreement.

15. On April 10, 2018 the applicant wrote to the respondent and asked her to refund the deposit, plus rent paid for April 2018 in the amount of $1,000. In the exchange that follows, it is apparent that each had a very different view of the terms of the homestay agreement.

16. The respondent took the position that the homestay agreement was for a 10 month term and that she was not obliged to refund either the deposit or April 2018 rent given their failure to provide her with reasonable notice. The respondent also claims she is entitled to be paid $1,000 for May 2018 rent based on her alleged agreement with the applicant's wife. I infer that the claim for May 2018 rent is based on an alleged 10 month term, and that after keeping the deposit, this would leave a shortfall of one month rent.

17. By contrast, the applicant took the position that they had agreed to a 4 month minimum term, no notice was required to terminate the agreement, and that he was entitled to a refund for April 2018 rent. I infer that the applicant's claim for April 2018 rent is based on a claim that he was entitled to terminate the homestay agreement without notice for just cause (dealt with in greater detail below).

Analysis

18. I find that the respondent was offering living accommodation in which the tenant would share bathroom or kitchen facilities with the respondent (owner). I therefore conclude that the *Residential Tenancy Act* does not apply to this tenancy (section 4).

19. This dispute comes down to what terms the parties agreed to as part of the homestay agreement. In order to be part of a contract, a term has to be agreed to by all parties. Based on the correspondence between the parties, I find that on May 7, 2017 the respondent offered to homestay the applicant's son on certain terms, including: a) a 4 month minimum stay; b) rent at $1,000 per month; c) a private bedroom with shared kitchen and bathroom facilities; d) a security/damage deposit of $1,000 due on booking; and e) she would provide 3 meals a day (offer).

20. The applicant responded to the offer on May 8 and said "sounds great!" and that his wife and child would view the place and confirm their decision. It is not disputed that the applicant, or his wife, paid the $1,000 deposit, and thereafter paid rent at $1,000 a month for 8 months September 2017 – April 2018 inclusive.

21. I must decide whether the homestay agreement was based on the offer, or some other oral agreement negotiated between the respondent and the applicant's wife.

22. The respondent relies on a receipt dated May 8, 2017 that she wrote for $1,000 on account of the deposit as recording an agreement for a 10 month term with a non-refundable damage deposit that could be applied to the last month's rent (receipt). The receipt is signed by the respondent only. These terms noted on the receipt are at odds with her offer the day before. The terms of the receipt are also at odds with a text message from the respondent to the applicant's wife on about May 9 confirming a "four month min commitment". In the circumstances, I find that the parties came to a homestay agreement on the terms set out in the offer. In particular, I find that the homestay agreement was for a minimum 4 month term. I also find that after the applicant's wife confirmed they would accept the offer, the respondent tried to add additional terms to the agreement by way of the receipt. I therefore reject the respondent's submission that the parties' agreement was for a 10 month fixed term.

23. The next issue to address is what, if any, amount of notice was required to terminate the homestay agreement. On the evidence, the parties did not specify what amount of notice (if any) was required to terminate. In the absence of such a term, the courts or a tribunal may be prepared to imply a term that the contract may be terminated on reasonable notice. It is appropriate to imply such a term where doing so is consistent with the parties' objective intentions. What constitutes reasonable notice depends on the circumstances of the case. See: *Hashemi v. Eeg*, 2015 BCSC 487.

24. In this case, I have already found that the homestay agreement was for a 4 month minimum term. The applicant had already moved overseas and his wife was to join him. Their son was 14 years old. He would be living with the respondent, who was a stranger to him. In the circumstances, I find the parties agreed that the length of the homestay agreement would depend on how the applicant's son adjusted to living in

the respondent's home (among other things). I therefore find that the homestay agreement could be terminated on reasonable notice after 4 months.

25. Before dealing with reasonable notice, I will first deal with the applicant's allegation that he and his wife had cause to terminate the homestay agreement without notice because he alleges the respondent was not providing his child with adequate food, thereby endangering the child. These are very serious allegations, and I have difficulty accepting them. The applicant's and his wife's conduct is inconsistent with them being concerned the respondent was compromising their son's health and safety. I therefore find that the applicant and his wife did not have cause to terminate the homestay agreement, and that reasonable notice was required to terminate.

26. I turn now to the issue of reasonable notice. Based on the letter, I find that the applicant and his wife gave the respondent one month's notice that they were terminating the homestay agreement. In all the circumstances, I find that one month's notice was reasonable. I therefore find that the applicant is not entitled to be refunded $1,000 for April 2018 rent.

27. With respect to the respondent's counterclaim for $1,000 for May 2018 rent, I infer that the respondent claims entitlement to an additional month of rent because she says the homestay agreement was for a 10 month term. If the deposit were applied to the last month's rent (for June 2018), that would leave one month owing. As noted above, I found that the homestay agreement was for a minimum 4 month term. There is therefore no basis for the respondent's counterclaim.

28. I finally turn to who is entitled to the deposit. As set out above, I found it was a term of the homestay agreement that the applicant or his wife would pay a "damage/security deposit" in the amount of $1,000. On the evidence, I find that the parties intended the deposit would be used both to reserve the space, and as security in the event the applicant's son caused damage to the respondent's home. I further find the parties' intended that the deposit would be returned to the applicant and his wife in the event there was no such damage.

29. There was no evidence to suggest that the respondent sustained any damage to her home. I therefore find that the respondent is not entitled to keep the deposit, and that it should be returned to the applicant.

30. Ordinarily, a successful party is entitled to be reimbursed for tribunal fees or dispute-related expenses. In this case, the applicant has achieved partial success. I dismissed his claims involving serious allegations of misconduct against the respondent. In the circumstances, I exercise my discretion to decline to award the applicant his tribunal fees or dispute-related expenses.

ORDERS

31. I order that within 30 days of this decision, the respondent must pay the applicant a total of $1,09.72, broken down as follows:
    a. $1,000 on account of the deposit; and
    b. $9.72 in pre-judgment interest under the *Court Order Interest Act*.

32. The applicant is entitled to post-judgment interest, as applicable, from the date of this order.

33. I dismiss the applicant's remaining claims.

34. I dismiss the respondent's counterclaim.

35. 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.

36. 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.

Jordanna Cytrynbaum, Tribunal Member