



Civil Resolution Tribunal

Date Issued: January 18, 2019

File: SC-2018-001341

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alexander v. Morrison*, 2019 BCCRT 27

B E T W E E N :

Taylor Alexander

APPLICANT

A N D :

Joel Morrison

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Taylor Alexander, and the respondent, Joel Morrison, were roommates. The applicant claims that the respondent kicked his Bluetooth speaker against a wall and broke it. He claims \$350, which he says was the value of the speaker. The applicant also claims \$180 in rent because he says the respondent forced him to move out early.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
5. 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.
6. 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 or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.
7. The *Residential Tenancy Act* does not apply to this dispute on the basis that the Residential Tenancy Branch refuses jurisdiction over “roommate disputes”.

ISSUES

8. The issues in this dispute are:
- a. Did the respondent break the applicant’s speaker? If so, how much should the respondent pay for the speaker?
 - b. Does the applicant overpay for rent for October 2017?

EVIDENCE AND ANALYSIS

9. While I have reviewed all of the materials provided, I have only commented on the evidence and submissions as necessary to explain and give context to my decision.
10. The respondent participated in the facilitation process, but chose not to provide any evidence or submissions after the facilitation process ended, despite being given the opportunity to do so.
11. The applicant provided the respondent with a damage deposit of \$300 on August 21, 2017. The date the applicant moved in is not in evidence. The applicant’s rent was \$600 per month.
12. The applicant says that on October 1, 2017, the parties agreed that the respondent would move out on October 16, 2017. The applicant says that the parties agreed that his damage deposit would cover the rent for the first half of October.

13. On October 6, 2017, the respondent installed new digital locks and provided the applicant with the code. The applicant says that he asked for assurances that the respondent would not change the lock code until the applicant moved out. The respondent would not give that assurance. The applicant therefore did not feel comfortable leaving his belongings in the home and began moving his things out the same day. The applicant says that he was fully moved out on October 7, 2017.
14. The parties' relationship was tense and the process of moving out was heated. The respondent made a separate tribunal claim against the applicant for the cost of a vase that the applicant threw at the respondent and broke. The applicant did not respond to that tribunal claim and in it the respondent received a default judgment.

The Broken Speaker

15. With respect to the broken speaker, the applicant says that the respondent broke his Bluetooth speaker by kicking it against a wall. The applicant did not see the kick but says that he heard a crashing noise and when he retrieved the speaker there was drywall in the speaker's protective shell.
16. In his Dispute Response filed at the beginning of this tribunal proceeding, the respondent says he did not break the speaker. He says that the applicant was playing music too loudly in the hallway so he placed the speaker in the applicant's room. He says that the speaker was still working after the following day. He believes that the applicant's claim is retaliation for the respondent's claim for the broken vase.
17. The parties were the only people home at the time, so there are no other witnesses to the incident.
18. The applicant provided an audio recording that he says contains a confession. In the audio recording, the applicant asks the respondent for an apology for breaking the speaker. The respondent apologized.

19. The *Apology Act* states that an apology made by a person cannot be taken into account when determining fault or liability. I find that the respondent's statements in the audio recording are an apology. I have therefore placed no weight on the audio recording.
20. For the reasons that follow, I find that the respondent broke the speaker.
21. The applicant provided photographs and video of the broken speaker. I find that the damage to the speaker is consistent with being kicked against a wall. As for the respondent's statement that the speaker was working the next day, the applicant says that the speaker still worked but would no longer charge. I infer that once the battery ran out, the speaker stopped working entirely. Therefore, the fact that the speaker worked the day after the incident is consistent with the applicant's description of the damage.
22. As mentioned above, the respondent did not make submissions or provide evidence in response to the applicant's submissions. While parties are under no obligation to provide evidence or submissions during the tribunal decision process, failing to do so can lead to the tribunal making an adverse inference.
23. In this dispute, the applicant provided a detailed explanation of what happened on the night he says the respondent broke the speaker. The respondent chose not to provide his version of events of what happened that night beyond the brief description in his Dispute Response.
24. Furthermore, in the respondent's Dispute Response, the respondent alleges that the applicant fabricated the claim as a form of revenge after the respondent received default judgment. This is a serious allegation that the respondent did not support with a detailed description of what he says happened on the night in question.
25. Therefore, in the circumstances of this dispute I find that it is appropriate to make an adverse inference against the respondent. I accept the applicant's version of events and find that the respondent broke the applicant's speaker.

26. The applicant provided the original receipt for the speaker from August 12, 2014. The speaker cost \$307.07. The applicant does not explain why he claims more than the value of the speaker. I award the applicant \$307.07 for the speaker.

The Rent Overpayment

27. With respect to the applicant's claim for rent, the respondent did not provide any submissions about this claim. The only relevant evidence from the respondent is that the applicant moved out 3 days after he asked the applicant to leave, not the next day. However, the respondent's evidence is unclear as to what date he says the applicant moved out.
28. The respondent does not dispute that there was an agreement to apply the damage deposit to a half month's rent. In the absence of any relevant evidence from the respondent, I accept the applicant's evidence that the respondent forced him to move out on October 7, 2017 even though the applicant had paid to stay until October 16, 2017. In addition to refusing to assure the applicant that he would continue to have access to the house until the end of his tenancy, the parties had each damaged the other's property. Clearly, the parties could not continue living together.
29. I award the applicant \$180 as claimed, which represents 9 days of pro-rated rent from October 7 to 16, 2017.
30. 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. I see no reason in this case not to follow that general rule. The applicant claims \$125 in tribunal fees and \$50 in dispute-related expenses.
31. The applicant says that he unsuccessfully tried to provide the Dispute Notice by registered mail and, failing that, drove from Victoria to Duncan twice to try to provide it in person. He says that she should be reimbursed for the registered mail and gas

for 2 trips to and from Duncan. I find that \$50 is a reasonable claim for the cost of registered mail and mileage for delivering the Dispute Notice in person. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$50 in dispute-related expenses.

ORDERS

32. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$664.18, broken down as follows:
- a. \$307.07 as reimbursement for the broken speaker,
 - b. \$180 in rent,
 - c. \$2.11 in pre-judgment interest under the *Court Order Interest Act*, and
 - d. \$175 for \$125 in tribunal fees and \$50 for dispute-related expenses.
33. The applicant is entitled to post-judgment interest, as applicable.
34. 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.
35. 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.

Eric Regehr, Tribunal Member