



Civil Resolution Tribunal

Date Issued: January 23, 2019

File: SC-2018-002164

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Clarke v. Jones*, 2019 BCCRT 86

B E T W E E N :

Robert Clarke

APPLICANT

A N D :

Michelle Jones

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Robert Clarke, sublet a room from the respondent, Michelle Jones, in Kelowna. The applicant says that the respondent failed to give him 30 days' notice that she wanted him to move out and that she damaged some of his belongings. The applicant claims a partial month of rent and utilities and the cost of the

damaged items. The respondent says that the applicant did not pay his rent and that she did not damage any of his belongings.

2. The applicant claims a total of \$1,356.25, broken down as follows:
 - \$656.25 as a refund 3 weeks' rent and utilities.
 - \$200 as a refund of the applicant's damage deposit.
 - \$300 for damage to his belongings and missing clothes.
 - An unspecified amount for stress and anxiety from being homeless.
3. The parties are each 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, 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 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.

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 or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.
8. The *Residential Tenancy Act* does not apply to this dispute on the basis that the Residential Tenancy Branch refuses jurisdiction over “roommate disputes”. This dispute falls under the tribunal’s jurisdiction because it is based on a contract between the parties and an alleged debt.

ISSUES

9. The issues in this dispute are:
 - a. Does the respondent owe the applicant a refund for a partial month’s rent and utilities and the damage deposit?
 - b. Is the respondent responsible for making the applicant temporarily homeless?
 - c. Did the respondent damage the applicant’s belongings?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. The respondent rents a 2 bedroom triplex in Kelowna. In early January 2018, she agreed to sublet one of the bedrooms to the applicant.
12. It is undisputed that the applicant moved in on January 15, 2018. It is also undisputed that the applicant paid \$337.50 for January rent, \$75 for January utilities and a \$200 damage deposit. The respondent signed receipts for these payments. The parties agree on little else.
13. The applicant says that the parties signed a handwritten lease that gave him the right to 30 days' notice of the end of the tenancy. The lease says that the applicant paid \$675 for February rent and \$150 for February utilities. The respondent says that the applicant did not pay any February rent or utilities. The respondent says that she did not sign the lease.
14. The respondent says that on February 1, 2018, she gave the applicant written notice that he had to leave. The respondent says that the applicant had told her that he would not be able to afford rent and that she was concerned for her safety. As an incentive to have the applicant leave, the respondent said that she would refund him some of his January rent if he left by February 15. The applicant says that he was never given written notice and that the respondent verbally told him to move out on February 3, 2018.
15. The applicant says that the respondent put his things outside and locked him out on February 9, 2018. The respondent says that her landlords helped the applicant move to a new home and that his things were only briefly outside as part of moving out.

16. The respondent says that after the applicant moved out, he harassed her that she owed him money. It is not disputed that on February 15, 2018, the parties met at a mall so that the respondent could give the applicant some money. She says she gave him \$310. He says it was only \$250.
17. This dispute requires me to decide whose evidence is more credible. For the reasons that follow, I find that neither party has been entirely truthful in their evidence to the tribunal.
18. With respect to the applicant's evidence, he claims \$856.25, which he says represents a refund of 3 weeks of rent and utilities, plus the damage deposit. As mentioned above, the applicant admits that the respondent paid him some money on February 15, 2018, although he disputes the exact amount. However, the applicant claimed the entire amount of rent, utilities and damage deposit without deducting anything for the money he received. The applicant offers no explanation about why he did not deduct any money from his claim. In the circumstances here, I find that the applicant's attempt to ignore the respondent's payment shows a lack of honesty in making his claims.
19. Second, the applicant says that the written lease includes a receipt for the money he paid for February. The document he relies on is dated January 31, 2018, and is divided into 2 parts. The first part sets out the rent and other basic terms of the parties' agreement. The first part says that the applicant paid \$675 in rent. Both parties' signatures appear at the bottom of the first part. The second part is dated February 1 and says that the applicant paid \$150 for February utilities. It also says that the applicant is entitled to a refund of 3 weeks of rent and utilities, the \$200 damage deposit and \$300 for damage to electronics and missing clothes. The applicant's initials appear twice on the second part but it was not signed or initialed by the respondent. In the applicant's evidence, the respondent signed this document as a receipt for all of the money he paid for February rent and utilities. However, the document includes information that the applicant would not know for over a week after he says the parties signed the document.

20. It is therefore clear that the applicant added to the document after the respondent signed the lease, and seeks to have the tribunal rely on it as a signed receipt for February utilities as well as rent. I find that the applicant's reliance on this document shows a lack of honesty in his evidence. Accordingly, I do not accept the applicant's evidence that he paid February utilities because it is not credible.
21. On the other hand, I do not accept the respondent's allegation that the applicant forged her signature on the written lease. The signature is very similar to her signatures on the 2 receipts that she admits she did sign. In addition, on February 8, 2018, she sent a message saying that she would give the applicant what is left of his money. If the applicant had not paid any February rent, I find that it is unlikely she would have sent this text message.
22. I find that the applicant has proven that he paid \$675 in rent for February but has failed to prove that he paid anything for February utilities. This means that the applicant breached the written lease and the respondent was entitled to evict him. However, because the applicant had paid for all of February, he is entitled to a partial refund.
23. The applicant says that he moved out on February 9, 2018, which the respondent does not dispute, meaning that he is entitled to be refunded \$458.04 in rent.
24. Regarding the damage deposit, the only evidence that the respondent was entitled to keep any of the applicant's damage deposit is that he did not pay \$150 for February utilities. I find that the respondent is entitled to withhold \$48.21 for utilities from the damage deposit for the period of time the applicant lived in the home. The applicant is entitled to be refunded the remaining \$151.79 of the damage deposit.
25. I accept the respondent's evidence that she gave the applicant \$310 on February 15, 2018. The respondent provided an independent witness statement that confirms the amount. The respondent says that she brought a witness to make sure that the applicant would not be able to deny receiving the money.
26. I find that the applicant is entitled to a refund of \$299.83.

27. The applicant also claims an unspecified amount because he says that the respondent's actions forced him to be homeless for 6 days. I have found that the respondent was entitled to evict the applicant. It follows that the respondent is not responsible if the applicant was temporarily homeless. In addition, the applicant did not claim a specific amount or provide any objective evidence, such as medical evidence, to prove that he suffered any mental injury as a result of being homeless. I dismiss this claim.
28. As for the applicant's remaining claims, I find that the applicant's evidence falls short of proving that the respondent damaged or took any of the applicant's belongings. His primary claim is that she damaged 2 of his guitars, and he provided an invoice showing the cost of repairing one of them. The respondent says that her landlords helped move the applicant's things and the applicant does not say that he actually observed the respondent damage his guitars. It therefore could have been the landlords who damaged the guitars. I dismiss these claims.
29. 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. However, the applicant did not claim reimbursement of tribunal fees.

ORDERS

30. I order that within 14 days of the date of this order, the respondent pay to the applicant \$303.75, broken down as follows:
- a. \$299.83 as reimbursement for rent and the damage deposit, and
 - b. \$3.92 in pre-judgment interest.
31. The applicant is entitled to post-judgment interest, as applicable. I dismiss the applicant's remaining claims.

32. 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.

33. 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