



Civil Resolution Tribunal

Date Issued: March 6, 2019

File: SC-2018-005137

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kisschowsky v. Boyes et al*, 2019 BCCRT 271

B E T W E E N :

Barbarah Kisschowsky

APPLICANT

A N D :

Paul Boyes and Deborah Gaylard

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about rent and damaged property. The applicant, Barbarah Kisschowsky, provided furnished accommodations to the respondents, Paul Boyes and Deborah Gaylard, from April 2017 to August 2017 in a home in Powell River, British Columbia. The applicant says the respondents did not pay the final month's rent as agreed and caused damage to a window blind. The applicant wants the

respondents to pay \$1,250 for rent and \$60 for the cost of repairing the blind. The respondents deny rent is owing and deny responsibility for the damaged blind. The applicant is self-represented and Paul Boyes represents the respondents.

JURISDICTION AND PROCEDURE

2. 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* (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 relationships between parties that may continue after the dispute resolution process has ended.
3. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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.
5. 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.
6. Section 4 (d) of the *Residential Tenancy Act* (RTA) excludes tenancies where an agreement includes residential and non-residential purposes and the primary or predominant purpose of the tenanted space is for a business purpose (see *Gardiner v. 857 Beatty Street Project*, 2008 BCCA 82). It is uncontested that the

respondents did work on the home in exchange for a reduction in rent. On February 15, 2018 the Residential Tenancy Branch refused to hear this matter for jurisdictional reasons. Given the above, I find the RTA does not apply, and the tribunal has jurisdiction to resolve this dispute.

ISSUES

7. This issues in this dispute are whether the respondents are required to:
 - a. Pay \$1,250 in rent for August 2017, and
 - b. Reimburse the applicant \$60 for the cost of repairing a damaged blind.

EVIDENCE AND ANALYSIS

8. The applicant bears the burden of proof for the claim on a balance of probabilities. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence necessary to give context to my decision.
9. The parties agree that between late April and late August 2017 they had a verbal agreement for the respondents to live in the applicant's fully furnished home and pay \$1,250 in rent monthly. And, that the applicant reduced the rent each month by the value of work done on the home to prepare it for sale. The parties also agree that the respondent did not pay rent in April and that they paid \$500 in May, \$1,250 in June, and \$1,075 in July.
10. The applicant says the respondents owe \$1,250 for rent in August. The respondents say that the applicant waived the August rent.
11. The respondents say that on June 30, 2017 the applicant's realtor told them the home had sold, that they needed to leave the home by the end of August, and that the applicant was waiving the August rent. The respondents say the realtor was acting as the applicant's agent. Given my findings below, I need not determine whether the alleged representation was made through an agency relationship. The respondents say they later confirmed with the realtor on multiple occasions that the

applicant was waiving the August rent. The applicant did not deny that the realtor gave the respondents notice of the sale but says the realtor did not know about the agreement. I infer the applicant says that the realtor could not or would not have waived the August rent if she did not know about the agreement.

12. The respondents say that in mid-August they confirmed with the applicant that no rent was owing for August. Specifically, the respondents say that while the applicant was weeding at the home they had a conversation with her in which they confirmed their departure and the waiver of the August rent. According to the respondents, the applicant said, "I see you've done your homework." The applicant does not deny this conversation and as such I accept that it happened as the respondents have said.
13. On balance, I find it more likely than not that the applicant waived the August rent. The applicant does not deny the conversation in mid-August. Given the conversation, I find the applicant acknowledged the August rent was being waived. In particular, I find the applicant saying the respondents had done their "homework" was an acknowledgement that no rent was required in August. If the applicant had disagreed with the respondents' statements I would have expected her to deny the waiver of the rent at that time or shortly thereafter. There is no evidence that the applicant denied that the rent was being waived. As such, I deny the applicant's claim for \$1,250 in rent.
14. This finding is also supported by the applicant's response when the August rent was not paid. Despite that rent being due on August 1, 2017 and the respondents living in the home until the end of August 2017 the applicant gave no submissions or evidence that she asked about the rent. If the applicant did not waive the August rent, I would have expected her to ask about the rent at some point in the weeks after it was due and before the respondents left the home.
15. As well, I note that the respondents say they requested a statement from the realtor for this dispute. The realtor allegedly declined saying she would be in a conflict of interest. In the circumstances, given the allegations by the respondents and the

applicant's assertion that the realtor did not know about the arrangements, I would have expected the applicant to provide evidence from the realtor or evidence that the realtor was unwilling to assist the applicant too.

16. The applicant says the respondents damaged a blind that cost \$60 to repair. The applicant did not make any submissions about the damaged blind other than to note it was damaged. The applicant provided a receipt dated August 28, 2017 to her from her realtor for \$60. The receipt does not say it is for a damaged blind or give details. The respondents say they have no knowledge of damage to a blind and that they left the home in better condition than when they moved in. I find there is insufficient evidence to assess the applicant's claim for reimbursement for the blind. Given the burden on the applicant, I find she has not proved that claim.

17. As the applicant was unsuccessful, under the Act and rules I also dismiss her claim for reimbursement of tribunal fees and dispute related expenses.

ORDER

18. I find the applicant's claims, and therefore this dispute, must be dismissed.

Megan Volk, Tribunal Member