Civil Resolution Tribunal

Date Issued: March 15, 2019

File: SC-20018-006018

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cole v. Wanke*, 2019 BCCRT 318

B E T W E E N :

Zina Cole

APPLICANT

A N D :

Elizabeth Wanke

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Zina Cole, paid the respondent Elizabeth Wanke an $825 security deposit for a rental unit. The applicant says when she met the respondent to sign the tenancy agreement the respondent had changed the terms of the agreement,

the applicant declined to sign it, and the respondent refused to return her security deposit. The applicant wants the respondent to pay her $1,650 which is double the amount of her security deposit.

2. The respondent says she never changed the terms of the tenancy agreement. She says she should not have to return the applicant's security deposit because she relied on the applicant's verbal agreement to rent the unit, and when the applicant reneged on the agreement the respondent was unable to rent her unit for a full month. The respondent filed a counterclaim against the applicant which she has since withdrawn, and so the style of cause above reflects only Ms. Cole's dispute against Ms. Wanke.

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 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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.

8. Both parties initially applied to the Residential Tenancy Branch (RTB) to resolve the claims that are the subject of this dispute. In a decision dated July 5, 2018, the RTB determined it did not have jurisdiction over the dispute because the parties did not establish the existence of an oral or written tenancy agreement. As discussed further below, while I am not bound by that decision I find it persuasive. I find this dispute is about a debt claim, and therefore the tribunal has jurisdiction to resolve it.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to reimbursement of her $825 security deposit and payment of an additional $825.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.

11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I find the respondent must reimburse the applicant's $825 security deposit.

12. It is undisputed that in April 2018 the respondent advertised an available rental unit for $1,650 per month excluding utilities. The applicant says that on April 17, 2018, the respondent confirmed to her over the phone that the rent would be $1,650 excluding utilities.

13. On April 19, 2018, the respondent's brother P.W. showed the unit to the applicant. The applicant says that during that meeting P.W. told her there had been a mistake in the online advertisement, and that utilities were included in the rent amount, which he confirmed was $1,650. The applicant says she wanted to clarify the rent amount, so she asked P.W., "the rental is $1650 plus utilities?" and he told her that was correct, but then he said it was easier for the landlord to include utilities in the rental amount, and he reiterated that there was a mistake in the advertisement. She says she left that meeting with the understanding that the rent was $1,650 including utilities, and she submitted a rental application to the respondent on that basis.

14. The respondent disagrees with this and says that on the day P.W. showed the applicant the unit he told her the rent would be $1,850 including utilities. The respondent submitted a May 16, 2018 letter from P.W. to the RTB which supports this claim.

15. It is undisputed that on April 20, 2018 the respondent told the applicant she could take the rental unit, and on April 21, 2018, the applicant e-transferred the respondent the $825 security deposit. Emails in evidence suggest the respondent required the applicant to pay the $825 security deposit on that date to secure the unit before she signed the tenancy agreement.

16. It is undisputed that on April 25, 2018 the parties met in person with the intention of signing a tenancy agreement for the rental unit. The agreement the respondent provided stated that rent was $1,850 per month including utilities. The applicant

says this is the first time she learned that utilities would be $200 per month, and she declined to sign the agreement. The respondent says the applicant knew based on the advertisement and what the respondent and P.W. told her that she would have to pay utilities in addition to rent, whether that amount "was $200 or $400." The respondent says $200 per month for utilities is reasonable.

17. The respondent says the applicant used the amount of utilities as an excuse to get out of the tenancy agreement because she had found a more preferable place to live that was closer to her school. The applicant denies this and says she did not apply for another rental unit until April 26, 2018, after she declined to rent the respondent's unit.

18. On April 26, 2018 the applicant sent the respondent a letter asking for the return of her security deposit. In the letter she says she paid the $825 deposit on the understanding that the rent was $1,650 per month including utilities. The respondent refused to return the applicant's security deposit because she says P.W. told the applicant the rent would be $1,850 including utilities. The respondent says she stopped advertising the unit after receiving the applicant's security deposit, and that after the applicant reneged on the agreement she was unable to rent the unit until June 1, 2018.

19. As noted above, the parties applied to the RTB to resolve these issues. In its July 5, 2018 decision the RTB said there was insufficient evidence to show that the parties had clarified or agreed to the amount of the monthly rent or utilities.

20. I am not bound by that decision, nor do I necessarily have the same evidence before me in this dispute. However, based on the evidence that is before me, I come to the same conclusion. The only direct evidence indicating the applicant was told the utilities would be $200 per month is P.W.'s letter, however the applicant's evidence directly contradicts this. The respondent says the applicant knew she would have to pay some amount of utilities, however since the amount of utilities was included as part of the total rent amount on the written tenancy agreement it

formed a fundamental part of that agreement. On the evidence before me I find the parties had not agreed on that fundamental term.

21. I find the parties' various communications combined with the applicant's payment of the $825 security deposit does not amount to a tenancy agreement. The fact that the parties both met on April 25, 2018 with the intention of signing a written tenancy agreement suggests the agreement was not yet finalized. Since the parties did not enter into an agreement, the applicant received no benefit from paying $825. There is no indication the parties agreed that the $825 deposit was non-refundable at the time the applicant paid it. In the circumstances I find the respondent must return the applicant's $825 security deposit. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* calculated from April 25, 2018, which is the day the respondent learned the applicant would not rent the unit.

22. The applicant also wants the respondent to pay her an additional $825 which would make the total amount of her claim double the amount of the security deposit. The *Residential Tenancy Act* (RTA) requires a landlord to pay a tenant double the amount of a security deposit in certain situations. However, as I have found the parties did not enter into a tenancy agreement, the RTA does not apply to this dispute. There is no evidence the applicant incurred any damages beyond $825, and I find there is no legal basis entitling the applicant to an additional $825 payment. I dismiss this claim.

23. 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. Since the applicant was partially successful I find she is entitled to reimbursement of $62.50 which is half of her tribunal fees. The applicant claimed $10.50 in dispute-related expenses, but she did not explain the reason for the expense, so I find she is not entitled to reimbursement.

ORDERS

24. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $898.61, broken down as follows:

    a. $825 as reimbursement of the security deposit,

    b. $11.11 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 in tribunal fees.

25. The applicant is entitled to post-judgment interest, as applicable.

26. 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.

27. 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.

Sarah Orr, Tribunal Member