



Civil Resolution Tribunal

Date Issued: March 21, 2019

File: SC-2017-003486

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Javid v. Farsian*, 2019 BCCRT 353

BETWEEN:

Mavaddat Javid

APPLICANT

AND:

Negin Farsian

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payments owed after the end of a shared housing arrangement.

2. In June 2016, the applicant, Mavaddat Javid, rented a room from the respondent, Negin Farsian. The respondent had rented the entire house from a landlord (Landlord), who is not a party to this dispute.
3. The applicant moved out in June 2017. The applicant says he was evicted because the Landlord sold the house, but the respondent “duplicitously” portrayed the eviction as an eviction due to property damage. The applicant claims a pet deposit refund of \$420, a security deposit refund of \$450, a refund of 1 month’s rent (\$865), and \$1,735 in punitive damages.
4. The respondent denies the applicant’s claims, and says she gave notice for the applicant to move out because their roommate situation was unacceptable, and because the applicant’s cat was urinating in the house. The respondent says the applicant is not entitled to any refunds or compensation, because the applicant damaged the property and left it unclean.
5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. 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 any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. 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 “he said, she said” scenario. Credibility of interested 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. 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. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility

is in issue. 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.

8. 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.

Tribunal Jurisdiction over Residential Tenancies

9. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* (RTA) does not apply to this dispute because the RTB refuses jurisdiction over “roommate disputes”, such as this one. I also note that the applicant already brought this dispute to the RTB, and the RTB refused jurisdiction on the basis that the applicant was not a tenant. For these reasons, I find the dispute is within the tribunal’s small claims jurisdiction, as set out in section 3.1 of the Act.

ISSUES

10. The issues in this dispute are:
 - a. Is the applicant entitled to a refund of the pet deposit or the security deposit?
 - b. Is the applicant entitled to a refund of 1 month’s rent?
 - c. Is the applicant entitled to punitive damages, and if so, how much?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The applicant moved into the house rented by the respondent in June 2016. The parties agree that this was a roommate arrangement, although the parties’ written contract describes it as “subletting”.

Return of Pet Deposit and Security Deposit

13. The applicant says he left his bedroom and the shared spaces in the same condition as when he arrived. He also says the respondent did not provide him with 2 opportunities to attend an inspection of the property's condition, as required under the RTA, so she is not entitled to keep the deposits.
14. The respondent says the respondent left behind many items, and did not clean his room or shared spaces. The respondent says she had to move the applicant's belongings outside, and dispose of those he did not take. She says she spent 5 hours cleaning his room, and also had to patch and paint the walls. The respondent also says the applicant's cat's urine damaged her couch and bass case, and she had to dispose of them because she could not remove the smell.
15. The respondent also provided a letter from the Landlord, stating that her damage deposit was reduced due to flooring damage.
16. Both parties provided evidence and submissions about whether post-move inspections were offered, who attended, and when. Post-move inspections are required under the RTA, in order for a landlord to retain a damage deposit. However, as previously noted, the RTA does not apply to this dispute. Rather, the parties' roommate arrangement, and all its obligations and entitlements, are governed solely by their written contract.
17. The written contract is dated May 28, 2016, and is signed by both parties. It is very brief, and says the respondent would sublet a room to the applicant starting on June 1, 2016, on a month to month basis, for \$840 per month. The contract also includes the following provisions about deposits:

Damage deposit is \$420 plus a pet deposit of \$450, a total of \$870 in deposits. Deposit will be returned based on damages or outstanding rent.

18. Based on these terms, and the evidence before me, I find the respondent was entitled to keep both the pet deposit and the damage deposit. My reasons follow.

Pet Deposit

19. The respondent says the respondent's cat urinated in the house and caused damage. The applicant says he always cleaned up after his cat, and that some of the mess could have been caused by the respondent's cat, or by neighbouring cats that visited their unit and patio.

20. I accept that there were 2 cats in the home, based on photos provided by the applicant. However, based on all the evidence before me, I find the urine mess and stains shown in the respondent's photos was most likely caused by the applicant's cat. For that reason, I find he is not entitled to a refund of the pet deposit.

21. The respondent wrote notes to the applicant on March 9 and March 23, 2017 stating that the respondent's cat was spraying or urinating in the house. The respondent asked the applicant to clean this up, and in her March 9 note she said that any damage would be deducted from his deposits. Further to these letters, in the April 25, 2017 letter from the respondent's lawyer, giving the applicant notice to move out by June 1, 2017, the lawyer wrote as follows:

It has come to our attention that your cat has been urinating inside the Property, causing significant damage, and creating an unsanitary environment. Ms. Farsian has informed you about this situation on numerous occasions and asked that you take the appropriate steps to resolve the matter; however, you have refused to do so.

22. I find that this contemporaneous documentation of cat urine issues supports the respondent's assertion that the applicant's cat caused the damage. I also place significant weight on screenshots of the applicant's Facebook posts, provided by the respondent. On March 13, the applicant wrote that the veterinarian suspected his cat had crystals in his urine. On April 8, he wrote that the cat was doing better with treatment, and that he had bought a product that seemed to have helped to gradually eliminate the cat's "marking behaviour". The applicant wrote:

I've not seen him pee on any surfaces indoors this month. As best as I can tell, what was most urgently inclining him to spray pee on surfaces indoors was his anxiety about a new cat in the neighbourhood...

23. I find that this evidence confirms that the applicant's cat urinated indoors, as shown in the respondent's photos. Finally, the respondent provided an April 17, 2018 email from a friend, RL, who wrote that when she visited the respondent's house it smelled like ammonia due to the applicant's cat spraying or urinating in the house. RL wrote that the house did not smell like that previously or currently.

24. Based on all of this evidence, I find that the applicant's cat urinated in the house and caused damage. For this reason, I find the respondent was entitled to keep the pet deposit.

Damage Deposit

25. The applicant says he left the home in the same condition as when he arrived. I find that the applicant, who bears the burden of proof in this dispute, has not provided evidence to prove that assertion.
26. The respondent provided photos showing dirt, mess, and significant holes in walls following the respondent's departure. The applicant did not provide photos to prove that the rooms were in similar condition when he moved in. Again, I note that the RTA does not apply, so the respondent does not bear the burden of proving the unit's prior condition.
27. Also, in a June 15, 2017 text message, the applicant confirmed that he had screwed his TV bracket into the wall using a thick screw. The photos show that this left a significant hole, which the applicant did not repair. Further text messages confirm that the respondent left items behind after his agreed-upon move-out date of June 15. He also did not return the keys until the following day, despite his promise to return them on June 15.
28. Based on the respondent's photos, I find that the cleaning and hole-patching took significant time and effort, and she also had to spend time moving the applicant's belongings after his move-out date. For these reasons, I find the respondent was entitled to retain the damage deposit under the terms of the written contract.
29. I therefore dismiss the applicant's claims for damage deposit and pet deposit refunds.

Refund of 1 Month's Rent

30. The applicant says he is entitled to a sum equal to 1 month of rent, as this amount should have been waived due to the sale of the house.
31. The applicant appears to rely on section 51(1) of the RTA, which says that when a tenant receives notice to end a tenancy so the landlord may use the property, the tenant is entitled to an amount equivalent to 1 month's rent. However, as previously stated, the RTA does not apply to this dispute. I therefore find the applicant has no entitlement to payment under the RTA.
32. The parties' contract does not include a term entitling the applicant to any rent refund or waiver at the end of his occupancy, for any reason. Rather, the contract says that "one-month notice is needed for termination of rental". I find the

respondent complied with this requirement, and I therefore dismiss the applicant's claim for 1 month's rent.

Punitive Damages

33. The applicant seeks \$1,735 in punitive damages. He did not provide submissions about how he arrived at this amount, but says he is entitled to damages for the respondent's "needlessly vindictive conduct". Specifically, the applicant says the respondent falsely characterized her notice to end his occupation as stemming from property damage, rather than due to the sale of the house.
34. I find that the evidence before me does not support any claim of vindictive conduct, as alleged by the applicant. While it is clear that the parties' roommate relationship broke down and became contentious, I do not find that this rose to the level of vindictive. Also, I find it does not matter why the respondent gave the applicant notice to move out, as she was entitled to do so under their agreement, and the applicant was not entitled to any rent waiver if the house sold, as alleged by the applicant.
35. Finally, in *Vorvis v. Insurance Corporation of British Columbia* [1989] 1 SCR 1085, the Supreme Court of Canada said the purpose of punitive damages is to punish extreme conduct worthy of condemnation, and that punitive damages are very rare in contract cases. This is a contract case, governed solely by the written agreement between the parties, and I find the respondent's conduct was not extreme or worthy of condemnation. For these reasons, I dismiss the applicant's claim for punitive damages.
36. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of dispute-related expenses.

ORDER

37. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member

