



Civil Resolution Tribunal

Date Issued: March 28, 2019

File: SC-2018-008176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Temple v. Malowany*, 2019 BCCRT 393

BETWEEN:

Amanda Temple

APPLICANT

AND:

Paul Malowany

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant, Amanda Temple, says her former roommate, respondent Paul Malowany, evicted her without cause or notice, and withheld her damage deposit.

The applicant seeks \$680 as a refund of one month's rent as compensation for wrongful eviction.

3. The respondent denies evicting the applicant. He says the applicant repeatedly left ground floor windows open or unlocked when she went out, despite his requests to keep them locked for safety reasons. He says the parties disagreed over this and their relationship broke down, so it was reasonable to ask her to move out. The respondent says he owes the applicant no rent.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
7. 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.

ISSUE

10. The issue in this dispute is whether the applicant is entitled to a refund of 1 month’s rent due to wrongful eviction.

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 parties and another roommate lived in a suite in a 3-storey building, which also contained suites occupied by other residents.
13. The respondent rented a room to the applicant in February 2018. The applicant paid the respondent a \$340 damage deposit, plus \$680 per month in rent.

14. The applicant initially claimed a refund of the \$340 damage deposit as part of this dispute. However, information from the tribunal facilitator indicates that this claim has been resolved. For that reason, I have not addressed the damage deposit in this decision.
15. The applicant says that while she lived with the respondent, they had a disagreement. She said the respondent wanted to speak with her about it, but she felt uncomfortable. The applicant says the respondent sent her messages that made her feel “slightly threatened”. The applicant says she told the respondent she felt most comfortable communicating through email or text, and in response the respondent asked her to move out. The applicant says the respondent said she was being “evicted”, and had to leave by the end of the month, which was contrary to their rental agreement. The applicant says that despite her contractual rights, she left on August 1, 2018 because she felt uncomfortable living there.
16. The applicant says she is entitled to a refund of \$680, equal to one month of rent, because the respondent evicted her without reasonable cause and in violation of their tenancy agreement and the RTA.
17. As previously stated, the RTA does not apply to this dispute. Therefore, the RTA provisions about notice to end tenancy, evictions, and damage deposits do not apply. Rather, the parties’ rights and entitlements are solely governed by the written agreement between them.
18. That agreement is set out in an email from the respondent to the applicant, dated January 25, 2018. While the rental agreement is described in the email as a “rental sublet agreement”, I find it is actually a roommate agreement. Texts provided in evidence show that the suite had a landlord, who is not a party to this dispute.
19. I find the applicant agreed to the terms of the emailed agreement when she paid the deposit and first month’s rent.
20. The roommate agreement says the applicant would pay the respondent a “one time deposit” of \$340, plus \$680 per month in rent, which included a bedroom, use of

common areas, and some utilities. The rental agreement contains the following terms about ending the tenancy:

Moving out One month notice please. "Notice" in writing (eMail) must be given one full day (24hrs) before the beginning of the month of departure. Simply notify Paul Malowany, verbally one full month in advance and, additionally in writing via email.

Termination of the agreement? In the Event of eviction, you are to have your room clean and presentable for viewing.

21. In text correspondence with the applicant, the respondent asked the applicant to move out, based on their escalating disagreement about windows left open, and their respective communication styles. In a subsequent text, the respondent admitted that his action was "closer to an eviction". I find it does not matter whether the parties mutually agreed to the move out, or whether the respondent evicted the applicant. There is nothing in their written agreement that prevents the respondent from asking the applicant to move out, or from evicting her. There is also nothing in the agreement that requires the respondent to compensate the applicant in such circumstances, such as by refunding 1 month of rent.
22. Also, having reviewed the parties' text correspondence, I find the respondent's actions were reasonable in the circumstances. The applicant repeatedly left windows unlocked when she went out, despite the respondent's stated safety concerns, and his 4 written reminders. The applicant made light of the respondent's safety concerns in her July 4, 2018 text, by writing as follows:

If you are so dreadfully worried about the security of your things I suggest YOU take responsibility for YOUR things and keep them in YOUR room and keep YOUR room secure. I pay rent every month, on time and that gives me just as much right to live and be comfortable in the house as you. You do not have the right or authority to control my behaviour. You do not have the right or authority to make me feel uncomfortable in my own

home. With all due respect, I request you stop harassing me with this issue. Thank you.

23. When the respondent then asked to speak in person with the applicant, she refused. I disagree with the applicant that the respondent's text messages were threatening. Rather, I find the applicant acted unreasonably, by repeatedly failing to lock the windows, refusing to respect the respondent's safety concern around the windows, and by refusing to discuss the matter. In the circumstances, I find the respondent was justified in instructing her to move out.
24. For these reasons, I dismiss the applicant's claim for a refund of 1 month's rent.
25. 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. As the applicant's claims were unsuccessful, I order no reimbursement. The respondent did not claim any fees or expenses.

ORDER

26. I dismiss the applicant's claims, and this dispute.

Kate Campbell, Tribunal Member