



Civil Resolution Tribunal

Date Issued: April 12, 2019

File: SC-2018-006756

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dube v. Boszko*, 2019 BCCRT 456

B E T W E E N :

Mark Dube

APPLICANT

A N D :

Nadine Boszko

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about utility payments arising from a tenancy.

2. The applicant, Mark Dube, and the respondent, Nadine Boszko, lived in separate apartments in the same building. The applicant says the respondent owes him \$276.62 for BC Hydro and Fortis Gas bills from November and December 2017.
3. The respondent denies the applicant's claim. She says she paid the amounts she owed for utilities directly to the utility companies. She also says the Residential Tenancy Branch (RTB) should decide this dispute.
4. Both parties are self-represented. While Ms. Boszko's name is spelled "Bozko" in the Dispute Notice, all subsequent documents show the spelling as "Boszko", so I have amended the style of cause to reflect this.

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.

ISSUES

9. The issues in this dispute are:
 - a. Does the tribunal have jurisdiction to hear this dispute?
 - b. If so, should I order the respondent to pay the applicant \$276.62 for utilities?

EVIDENCE AND ANALYSIS

10. 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.

Jurisdiction

11. Having reviewed the evidence and submissions in this dispute, I find it is most appropriate to refuse to resolve it under section 11(c) of the Act, on the basis that it is impractical for the tribunal to resolve the dispute at this time.
12. The tribunal generally does not take jurisdiction over residential tenancy disputes, as these are decided by the RTB. The RTB has exclusive jurisdiction over matters falling within the *Residential Tenancy Act* (RTA).
13. It may be that the applicant's claim could be addressed by the tribunal under the common law and section 118 of the Act. However, the tribunal's practice is that

tenancy disputes should be pursued at the RTB first, so the RTB can determine the scope of its own jurisdiction. This is particularly true in this case, as the parties had an active proceeding before the RTB before regarding the applicant's tenancy, and agreed to a settlement of that dispute (which was unrelated to the utilities issue in this proceeding, as discussed below).

14. The facts underlying this dispute are somewhat confusing. As noted above, both parties lived in separate apartments in a residential building. The building was owned by a third party, who is not named as a party to this dispute. The respondent signed the tenancy agreement for her apartment on June 1, 2016. On that tenancy agreement, the respondent is identified as the tenant and the applicant is identified as the landlord. The parties' submissions indicate that the applicant was acting as landlord because he was the building manager or caretaker.
15. The applicant says he was unjustly fired from the caretaker position in December 2017. Subsequent documents show that the respondent then became the building caretaker. The respondent filed paperwork to evict the applicant from the building for non-payment of rent in March 2018. The respondent signed that paperwork as landlord. The eviction, and some related matters, were heard by the RTB in May 2018. The RTB documents identify the applicant as the tenant and the respondent and another person, PS, as landlords. The parties settled those matters, as confirmed in a written RTB decision dated May 18, 2018.
16. In this dispute, the applicant seeks payment for utility bills he says he paid on behalf of the respondent. He wrote that the respondent "has outstanding utility bills as per her rental agreement". The respondent disputes this, and says she already paid any amounts owed. In any event, the documents in evidence show that any payments made by the applicant were made in his capacity as landlord or building caretaker, and not in his personal capacity, or based on a private agreement with the respondent outside of her tenancy. This is confirmed by the fact that the applicant relies on the written provisions of the respondent's tenancy agreement to support his claim. Thus, the true substance of this matter is about the terms of the

respondent's tenancy, and amounts owed arising from that tenancy. The dispute is not about the breach of a separate agreement between the applicant and the respondent.

17. For these reasons, I refuse to resolve this dispute pursuant to section 11(c) of the Act. If the RTB decides it does not have jurisdiction over this dispute, the applicant may reapply to the tribunal with particulars of the RTB's response.

18. Neither party claimed reimbursement of tribunal fees or dispute-related expenses, so I order none.

ORDER

19. I refuse to resolve this dispute under section 11(c) of the Act.

Kate Campbell, Tribunal Member