



Civil Resolution Tribunal

Date Issued: April 23, 2019

File: SC-2018-008171

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Matthews v. Blaskievich*, 2019 BCCRT 492

B E T W E E N :

Theron Matthews

APPLICANT

A N D :

Betty Blaskievich

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute between roommates. The applicant, Theron Matthews, rented a bedroom from the respondent, Betty Blaskievich in a home she owned with a shared kitchen and laundry room. After some disagreements and various notices to end the agreement, the respondent had the applicant removed from her property by the police on October 25, 2018. The applicant wants the respondent to return his

\$400 damage deposit and refund him \$129 in rent for the remaining days of October 2018 on which he did not have access to the property. He also wants the respondent to reimburse him \$56.97 for the cost of renting a U-Haul truck to move out unexpectedly.

2. The respondent says the applicant made her feel unsafe in her home, and the police told her she was not required to return the deposit. She says the applicant did not use a U-Haul truck to move, and that he is responsible for his own moving costs.
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, he 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. The *Residential Tenancy Act* does not apply to this dispute because the Residential Tenancy Branch refuses jurisdiction over "roommate disputes." I therefore find the tribunal has jurisdiction over this claim, as it falls within the tribunal's small claims jurisdiction over debt and damages.

ISSUES

9. The issues in this dispute are:
 - a. Is the respondent required to return the applicant's \$400 deposit?
 - b. Is the respondent required to refund the applicant \$129 for the days in October 2018 on which he did not have access to the property?
 - c. Is the respondent required to reimburse the applicant \$56.97 for his U-Haul rental?

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.
12. In July 2018 the parties signed an 8-month lease for the applicant to live in the respondent's furnished basement with a shared kitchen and laundry room from September 1, 2018 to April 30, 2019 for \$800 per month. The written agreement does not mention a security or damage deposit or include any terms about how the parties may terminate the agreement. On July 11, 2018 the applicant paid the respondent a \$400 deposit and \$800 for September rent.
13. The applicant says that after he moved in the respondent breached his privacy and personal space multiple times and discriminated against him because of his weight, which the respondent denies. On October 20, 2018 the applicant gave the respondent written notice that he would vacate the basement by December 1, 2018 because of numerous breaches of his privacy.
14. The respondent says that after responding to this letter by email the applicant became confrontational and raised his voice at her, which made her feel uncomfortable and unsafe in her home. The applicant denies this allegation.
15. On October 21, 2018 the respondent emailed the applicant to say she was no longer comfortable with him living in her home, and that he must vacate the property by October 31, 2018. She said she would return his deposit once she had inspected his room and once he returned the keys and garage remote. On October 22, 2018 the applicant sent a letter to the respondent indicating his intention to vacate the property by October 31, 2018 and his expectation to receive a full refund of the \$400 deposit on that date. I find that as of October 22, 2018 the parties had reached

an agreement for the applicant to move out by October 31, 2018, and that he would receive his \$400 deposit at that time.

16. The respondent says that over the next few days the applicant's confrontational behavior continued, which gave her anxiety and made her feel unsafe. She says when she notified the applicant that she would be showing his room to a potential renter the next day, he duct-taped his bedroom door closed and locked the bathroom. The applicant denies all of these allegations.
17. By October 25, 2018 the respondent says the situation had become intolerable, so she phoned the police who told her they could escort the applicant off her property at any time and that she was not required to refund his deposit. The applicant says the police came to the property that evening and he quickly removed his belongings from the property, some of which he stored in the respondent's garage until he could arrange to move them. He says he gave the keys and garage remote to the police officer and left the property at approximately 9:30 p.m.
18. The applicant returned to the property on October 26, 2018 to retrieve the remainder of his belongings. He says he rented a U-Haul truck for this task, and he submitted a U-Haul receipt for \$56.97 to support this claim. He says under normal circumstances he would have used his own car to move his belongings over the remaining 5 days left at the property, but he rented the U-Haul truck so that he could quickly remove his belongings. The respondent says the applicant retrieved his belongings that day with a pick-up truck, not a U-Haul rental. She also says the applicant taped her garage door sensor as he was leaving the property in a final "vindictive and threatening act," which the applicant denies. The applicant says he asked the respondent to return his \$400 deposit and \$129 for the remaining rent for October 2018 and that she refused payment and told him to leave the property.
19. I note the respondent says she turned away potential renters during the summer of 2018 while she was holding the basement for the applicant. She also says that since the termination of the applicant's rental agreement she has lost rental income and paid monthly fees to advertise her vacant basement. However, the respondent

did not submit evidence to support these allegations, and I have already found that on October 22, 2018 the parties agreed to end the rental agreement by October 31, 2018. I also note there is no counterclaim before me, so I decline to address these issues further.

20. I note that as part of his evidence the applicant submitted links to 6 videos which I was unable to view. However, based on the applicant's description of the videos and the evidence that is before me, I find the videos are not relevant or necessary to decide the issues in this dispute.

Is the respondent required to return the applicant's \$400 deposit?

21. The parties' rental agreement does not refer to a deposit of any kind. In a July 10, 2018 email to the applicant the respondent asked for a \$400 "damage" deposit which the applicant paid on July 11, 2018. As described above, as of October 22, 2018, I find the parties had agreed that the applicant would vacate the property by October 31, 2018 at which time the respondent would return his \$400 deposit and the rental agreement would be terminated. Because I have found the parties were in agreement on October 22, 2018, I find it is unnecessary to determine whether the respondent breached the applicant's privacy before that time, or whether such a breach entitled the applicant to terminate the rental agreement.

22. The respondent decided to keep the applicant's deposit because she said he made her feel unsafe in her own home. However, I find these allegations are unrelated to the applicant's entitlement to the return of the damage deposit. There is no evidence the applicant damaged the respondent's property in any way. While the respondent alleges that the applicant taped his bedroom door and her garage door sensor, she provided no evidence to support these claims and the applicant denies them.

23. The respondent says the deposit was not only a damage deposit, but also a security deposit in case the applicant breached the rental agreement. However, I find there is no evidentiary basis for this claim. As of October 21, 2018, the respondent agreed

in writing to return the applicant's deposit when he moved out at the end of the month. In her initial email to the applicant in July 2018 she referred to it only as a "damage" deposit, and there is no evidence she intended it to be used for security if the applicant breached the agreement.

24. In the circumstances, I find there is no legal basis entitling the respondent to keep the applicant's deposit. Therefore, I find the respondent must return the applicant's \$400 deposit.

Is the respondent required to refund the applicant \$129 for the remaining days in October 2018 on which he did not have access to the property?

25. As explained above, I find that as of October 22, 2018 the parties had agreed to end the rental agreement on October 31, 2018. I find the parties' agreement included an implied term to treat each other with respect and not to engage in any behavior that would make the other party feel unsafe. While the respondent says she felt unsafe in her home, I find the evidence before me does not establish that the applicant breached this term of the agreement. While I find the respondent was within her rights to require the applicant to move out of her home before October 31, 2018, this alone did not entitle her to keep the full amount of rent for October. It is undisputed that the applicant paid the respondent \$800 for rent for the entire month of October 2018 and that he did not have access to the property after October 26, 2018. Therefore, I find the applicant is entitled to a refund of \$129 which is the proportional amount of the monthly rent for the last 5 days of October 2018.

Is the respondent required to reimburse the applicant \$56.97 for his U-Haul rental?

26. The applicant says he was planning to use his own car to move out over the last few days of October but that after his unexpected removal from the property on October 25, 2018, he was required to rent a U-Haul truck to enable him to quickly retrieve his belongings on October 26, 2018. The receipt he submitted for \$56.97 shows he rented a vehicle for only a few hours during the time he says he went to

the property. The respondent does not deny that he came to her property during this time, but she says he used a pickup truck, not a U-Haul truck, to retrieve his belongings.

27. It is uncontested that the applicant's room was furnished, and aside from 1 chair that he says he purchased during his stay, there is no evidence that he had any other large furniture at the property. The applicant did not provide details about the size of his car, or the amount or size of his belongings that he needed to move. While it may have been more convenient for the applicant to use a U-Haul truck to move on October 26, 2018, I find the applicant has not established that it was a necessary expense or that the respondent should reimburse him. I dismiss this claim.
28. In total, I find the respondent must pay the applicant \$529 to return the deposit and the pro-rated rent for October. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* calculated from October 26, 2018, which was the last day he was at the respondent's property.
29. 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. The applicant was generally successful, so I find he is entitled to reimbursement of \$125 in tribunal fees. He has not claimed any dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$658.60, broken down as follows:
 - a. \$529 to refund the deposit and pro-rated rent for October 2018,
 - b. \$4.60 in pre-judgment interest under the Court Order Interest Act, and

c. \$125 in tribunal fees.

31. The applicant is entitled to post-judgment interest, as applicable.
32. 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.
33. 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