



Civil Resolution Tribunal

Date Issued: May 3, 2019

File: SC-2018-008217

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Murray v. Ward*, 2019 BCCRT 528

B E T W E E N :

David Murray

APPLICANT

A N D :

Leslie Ward

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant David Murray's 20-year-old daughter H.M.M. rented a room from the respondent Leslie Ward. The applicant paid the respondent \$750 in rent for November 2018 and H.M.M. stayed at the respondent's suite for only 3 nights. The applicant wants the respondent to reimburse him \$600.

2. The respondent says H.M.M. smoked at the property in breach of the agreement and that she caused the respondent to feel uncomfortable, so she should not have to reimburse the applicant.
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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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 9.3 (2), 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* (RTA) does not apply to this dispute because the Residential Tenancy Branch refuses jurisdiction over "roommate disputes." As this is a dispute between roommates, I find the tribunal has jurisdiction over this claim, as it falls within the tribunal's small claims jurisdiction over debt and damages.

ISSUE

9. The issue in this dispute is whether the respondent is required to reimburse the applicant \$600.

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 dismiss the applicant's claim.
12. The respondent placed an advertisement on Craigslist for a furnished room for a mature female for \$800. The first sentence in the body of the advertisement says, "Non Smoker."
13. On October 24, 2018 both the applicant and his daughter signed a roommate agreement with the respondent. The agreement is between the respondent and H.M.M., and it says the "tenancy" started on October 24, 2018. The end date is not specified. It states that H.M.M. agrees to pay the respondent \$750 per month by the last business day of each month, and that one month's notice is required to end the agreement.
14. The agreement also states, "There is no smoking, including e-cigarettes in the building, balconies, or on the outer grounds of the property." The applicant says the respondent did not mention smoking when he was there.
15. It is undisputed that after signing the agreement on October 24, 2018 the applicant paid the respondent \$750 for the month of November. The respondent says H.M.M. moved in early on October 24, 2018 at no extra charge. The applicant does not dispute this.

16. The respondent says the applicant and H.M.M. lied to her about H.M.M.'s smoking habit and her employment. She says during the 3 days H.M.M. lived with her she smoked, brought over an unannounced guest, and generally made her feel uncomfortable.
17. The respondent says H.M.M. left for Vancouver on October 27, 2018 and never returned. The applicant does not dispute this.
18. On October 31, 2018 the respondent emailed the applicant to provide 30 days' notice for H.M.M. to move out at the end of November. The applicant responded that day offering to receive reimbursement of pro-rated rent instead. There is no indication the respondent accepted this offer. On November 1, 2018 the respondent emailed the applicant stating that H.M.M.'s coats, paperwork and food were at the suite, and that she expected H.M.M. to return her keys when she retrieved her belongings. She said, "...Please email me as to the day and time that exchange will happen." There is no indication the applicant responded to this email or returned the respondent's keys.
19. The applicant is responsible for proving his claim, and on the evidence before me, I find he has not done so. The agreement does not require a reason for one party to terminate it, only that they provide the other party with 30 days' notice. The applicant says the respondent initially gave 30 days' notice and then rescinded that offer. However, I find the respondent's November 1, 2018 email is vague, and it indicates that H.M.M. still had access to the suite with no specific end date. My understanding of that email is that the respondent was waiting for the applicant to let her know when H.M.M. would return to retrieve her belongings and return the keys. While the email could suggest H.M.M. would no longer live at the respondent's property, it is certainly not clear.
20. The applicant has also not provided evidence or submissions to explain what happened after that email, or if or when H.M.M. returned to the respondent's property or returned her keys. In the absence of that information, I am unable to

determine the last day H.M.M. had access to the suite. I find the applicant has not established that the respondent breached the agreement.

21. I also note there is nothing in the agreement that provides for a refund of rent paid in advance if the agreement is ended early. Even if the applicant was entitled to a refund under the agreement, he has not established the last day H.M.M. had access to the suite, so I am unable to calculate any pro-rated amount of the \$750 rent payment. The applicant has not explained how he calculated the \$600 he claims, and I find it is an arbitrary amount. For all of these reasons I find the applicant has not proven his claim, and I dismiss it.
22. Under section 49 of the Act, and tribunal rules, since the applicant is unsuccessful I find he is not entitled to reimbursement of his tribunal fees. He has not claimed any dispute-related expenses.

ORDER

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

Sarah Orr, Tribunal Member