Civil Resolution Tribunal

Date Issued: May 8, 2019

File: SC-2018-004169

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Norrish v. Berkeveld*, 2019 BCCRT 544

B E T W E E N :

Tara Norrish

APPLICANT

A N D :

Madaleine Berkeveld

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Tara Norrish, rented a room from the respondent, Madaleine Berkeveld, who leased an apartment in Vancouver. The applicant paid the respondent a $325 damage deposit when she moved in, and she says the respondent did not return it when she moved out. The applicant wants the

respondent to return her $325 damage deposit and pay her $75 in interest and legal fees.

2. The respondent says she returned $10 of the applicant's damage deposit and kept the remainder to replace keys and repair damage the applicant caused in the apartment.

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, she 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 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 applicant is entitled to the return of her $325 security deposit.

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. The respondent submitted evidence but chose not to make submissions. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

12. From June 1, 2016 to July 1, 2017, the applicant rented a room from an apartment the respondent leased in Vancouver. Multiple roommates, including the applicant and the respondent, shared a common kitchen and living room in the apartment.

13. On May 12, 2016 the applicant signed a statement indicating that she had paid $325 for a damage deposit and that the damage deposit would be returned after her move out date once her room was checked for damages. The respondent did not sign this statement.

14. On May 31, 2017 the applicant told the respondent that she would move out by July 1, 2017. In a text message on June 14, 2017, the respondent said she would return the applicant's damage deposit on July 1, 2017 provided the applicant left her bedroom and the bathroom tidy. On June 14, 2017 the applicant sent the respondent an email confirming her agreement to return the $325 deposit on July 1, 2017.

15. On June 28, 2017 the respondent texted the applicant to remind her that "everything is to be cleaned and moved out" before 12:00 p.m. on July 1, 2017.

16. The applicant submitted photographs she said she took on June 29, 2017 which I find show a tidy and clean bathroom and solarium. On June 30, 2017 the applicant texted the respondent to tell her she had cleaned the bathroom and solarium. The respondent replied, "Kitchen? Living room?" The applicant responded that she had cleared her space in the fridge and her designated kitchen cupboards. She said she forgot to clean some spilled pepper from one of the cupboards. She stated, "As for the kitchen and living room 6 people plus roommates have accumulated that mess…" The respondent replied that the bathroom smelled, the kitchen was "disgusting," and she said the fact that those were shared spaces did not mean the applicant was not responsible for leaving them clean. The applicant responded that she had washed and put away all her dishes, and she offered to return to clean up the spilled pepper. If the respondent replied to this message it is not in evidence.

17. On Friday, June 30, 2017, the respondent told the applicant by text that she would send her the $325 deposit on Monday, July 3, 2017. She also said cleaning the apartment should have been a team effort but that the applicant seemed to have been the only one who "put effort in," and stated that she was supposed to have left the keys on July 1, 2017.

18. The respondent submitted a statement from A.E. who moved into the apartment on July 1, 2017, after the applicant had moved out. A.E. said “both of” the respondent’s roommates left without cleaning their spaces, the fridge contained old groceries, and the “old” roommates had left their garbage in the apartment. A.E. said that because the applicant did not return her keys on July 1, 2017 A.E. had to share 1 set of keys with another roommate for a month, and the respondent had to buy a new set of keys on August 1, 2017.

19. On July 3, 2017 the applicant contacted the respondent multiple times to arrange a time to drop off the keys, and to receive her damage deposit. The applicant says on July 4, 2017 the respondent said that if the applicant returned her keys that day she would e-transfer her $250 of the damage deposit. The applicant says she responded by email and never received a response from the respondent. On July 5, 2017, having heard nothing from the respondent, the applicant emailed the respondent and said she would mail her keys to the apartment’s mailing address, which she said she did. She provided a forwarding address to which she asked the respondent to send her damage deposit.

20. In September 2017 the respondent mailed the applicant a cheque for $10 which she said was the remainder of the damage deposit after deducting $105 for the cost of replacing the keys, a $60 inconvenience fee for returning the keys late, and $150 for a broken bed, which the respondent says cost her $250 brand new and was in brand new condition when the applicant moved in.

21. In all the circumstances, I find the applicant is entitled to the return of her damage deposit, less the $10 she already received from the respondent. The statement the applicant signed indicates that she would receive her damage deposit after she moved out and her room was checked for damage. The respondent claims the applicant damaged a bed but provided no evidence to support this claim aside from a note. On June 14, 2017, the respondent had indicated the return of the damage deposit was contingent only on the applicant tidying her room and the bathroom, and I find the applicant has established through photographs and text messages

that she cleaned those rooms. While the respondent suggests the applicant left the kitchen a mess, and left her garbage in the apartment, there is no indication that the applicant was required to clean the common areas, and there are no photographs to support these claims. While A.E.'s statement does support the respondent's claims that the apartment was extremely dirty on July 1, 2017, there were multiple people living in the apartment at that time, and there is no evidence the applicant was responsible for any of that alleged mess.

22. The correspondence in evidence shows the applicant made multiple attempts to return the keys but that the respondent was unresponsive, so she mailed them. The respondent provided no receipt to show the cost of replacing the keys, and the fact that she also charged a late fee for the keys suggests she did receive them from the applicant. I find there is no legal basis for the respondent to keep any portion of the damage deposit. Therefore, I find the respondent must pay the applicant $315 for the remainder of the damage deposit. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act*, calculated from July 1, 2017, which is the day she moved out.

23. Under section 49 of the Act, and tribunal rules, since the applicant was generally successful I find she is entitled to reimbursement of $125 in tribunal fees and $10.76 in dispute-related expenses for registered mail. She has also claimed $75 in additional interest and legal fees but provided no calculation or description of the extra interest claimed and no proof she incurred legal fees. In any event, the tribunal only awards reimbursement of legal fees in extraordinary circumstances, and I find there is nothing extraordinary about this case. I dismiss these claims.

ORDERS

24. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $458.11, broken down as follows:

    a. $315 as reimbursement for the damage deposit,

b. $7.44 in pre-judgment interest under the *Court Order Interest Act*, and

c. $135.67 for $125 in tribunal fees and $10.67 for dispute-related expenses.

25. The applicant is entitled to post-judgment interest, as applicable.

26. The applicant's remaining claims are dismissed.

27. 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.

28. 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