



Civil Resolution Tribunal

Date Issued: May 21, 2019

File: SC-2018-007408

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Walker v. Prouten*, 2019 BCCRT 607

B E T W E E N :

Kathryn Walker

APPLICANT

A N D :

Cameron Prouten

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The parties lived together in a romantic relationship between mid-December 2017 and May 8, 2018, having dated for about a year. The applicant, Kathryn Walker, says she paid rent and utilities for the respondent, Cameron Prouten, as a loan. The respondent moved out on May 9, 2018.

2. The applicant claims \$2,235 for the respondent's 3-months of rent from February to April 2018, which is based on \$745 per month. The applicant also claims \$107.67 for the respondent's share of internet (\$44.24) and hydro (\$63.43), for those same 3 months. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.

7. The *Residential Tenancy Act* does not apply to this dispute as the parties were roommates and this dispute is about whether a loan or gift was made. As this claim is in substance a debt claim, the tribunal has jurisdiction.

ISSUE

8. The issue is to what extent, if any, the respondent owes the applicant for unpaid rent and utilities charges.

EVIDENCE AND ANALYSIS

9. In a civil claim, the burden of proof is usually on the applicant, on a balance of probabilities. However, under the law of gifts discussed below, once the applicant has proved the transfer of the goods or money, the burden shifts to the person alleging the items or money was a gift, in this case the respondent (see *Pecore v. Pecore*, 2017 SCC 17). I have only referenced the evidence and submissions as necessary to give context to my decision.
10. As noted above, the applicant claims a total of \$2,342.67:
 - a. \$2,235: rent share at \$745/month, for February, March, and April 2018. The applicant does not seek rent for the 8 days of May the respondent lived with her.
 - b. \$44.24: internet share for January, February, March, and April (\$10.22 for January and February, and \$11.90 for March and April)
 - c. \$63.43: hydro share for January, February, March, and April (\$26.78 for December to February, and \$10.01 for April to May).
11. There is no written loan agreement. The respondent admits he was to pay some rent and utilities to the applicant, but says he only owes \$1,607.67. The difference is the respondent says he does not owe \$750 for 1 month's rent, a monthly rent figure the parties both use in their arguments though the applicant claims only \$745 per

month. The issue in this dispute is whether the applicant agreed to forego receiving January rent from the applicant.

12. The respondent agrees he owes the \$107.67 utilities as claimed, and the evidence filed supports that amount. I find the respondent must pay the applicant \$107.67 for utilities.

Rent

13. There was no written agreement about rent. However, the parties agree and the evidence shows they generally agreed to split their shared living costs 50/50, including rent and utilities. As noted, the parties agree the respondent's monthly rent share was \$750, with the applicant paying the same. That said, the applicant also provided her own spreadsheet showing the total monthly rent was \$1,490, which would mean each share was \$745, and this is what the applicant claims in this dispute. I note that in her later August 1, 2018 letter to the respondent, the applicant says the rent share amounted to \$747.50 per month. There is no explanation for the discrepancy. However, as the parties agree to \$750, and the applicant claims only \$745, that is the figure I accept.
14. As noted, this dispute is about \$745, 1 month's rent. The respondent says he could not afford to move in with the applicant without an agreement that she give him a "reprieve" from the first month, January. The respondent says the applicant was adamant he live with her and offered to forgive the first month's rent, which was for January 2018. As noted above, the applicant does not claim rent for January.
15. However, on February 23, 2018 the respondent e-transferred \$735 to the applicant to pay, he says, his share of February's rent. There is no notation on the screenshot of the transfer to indicate what it was for. On the respondent's own evidence, he indicates that he thought it was for the February rent share, rather than his ever expressly saying so. The respondent also does not explain why it was only for \$735.

16. It is clear the applicant treated that \$735 payment as being for January rent. The applicant submits the respondent's Dispute Response was the first time she ever heard him allege he was entitled to free rent in January.
17. The respondent says his May 17 and June 26, 2018 texts showed his intention to pay for only the 2 months' rent that he "had missed" (being March and April), and his share of utilities for his time in the applicant's home. The applicant submits his debt totaled \$1,607.67, which I infer is the \$107.67 owed for utilities plus \$1,500 for 2 months' rent (using the \$750 per month figure).
18. On reviewing the parties' May 17 and June 26 texts, the applicant did not narrow the timeframe to 2 months' rent. All she said was "eventually I do need you to pay me back" and the respondent said "I fully intend to". The June 26 text said it would be the last thing the respondent would send "besides your money when I'm paid".
19. As referenced above, on August 1, 2018, the applicant sent the respondent a 'demand letter', which for the first time spelled out in writing exactly what she was claiming: 3 months' rent plus associated utilities. I find the tenor of the parties' exchanges in evidence supports the applicant's position that she waited the 4 months before making the formal demand because she was empathetic to the respondent's statement he needed to find a job. I note the evidence shows the respondent has not yet paid the applicant anything because at the time she started this proceeding the respondent was not yet in a financial position to do so.
20. In all of these circumstances, I find the respondent's assertion about the January 2018 rent amounts to his saying she gave him a gift of free rent for that one month. It is undisputed the applicant paid the entire month's rent. I find the burden is on the respondent to show the applicant had given that gift. I find he has not done so, though my conclusion would be the same if the applicant bore the burden.
21. For there to be a legally effective gift, three things are required: an intention to donate, an acceptance, and a sufficient act of delivery. The context of the parties' romantic relationship at the time of the alleged gift is relevant, but not determinative.

The evidence needs to show that the intention of the money as a gift was inconsistent with any other intention (see *Lundy v. Lundy*, 2010 BCSC 1004). I find the weight of the evidence does not show the applicant intended to gift the respondent his share of the January rent.

22. The respondent admits that he was on an overseas exchange program in the 5 months before he moved in with the applicant. He says “during my time abroad”, the claimant made requests for him to move in with her when he returned, which were a “preamble” to her offer of a reprieve from the first month’s rent (January). Yet, the respondent provided no evidence of these requests, apart from his submission. The respondent does not otherwise say how or when the applicant made the offer of free January rent. He has not produced any text messages or emails to that effect, yet there are other text messages between the parties in evidence, and again the respondent was living overseas at the time the alleged gift would have been made.
23. The respondent elsewhere submits that “the understanding, the pretense” under which he moved in with the applicant was that he would not be expected to pay rent for January 2018, though he would pay the \$750 month for all other months. I find this phrasing supports the conclusion that the respondent may have expected the applicant to forgive January 2018 rent because he could not afford to pay it, rather than her actually making that offer expressly.
24. I agree with the applicant that the respondent’s agreement to pay utilities for January 2018 is some support for the conclusion that she would not have otherwise forgiven rent for that month. In other words, if the applicant required payment of relatively nominal utilities charges, it is not likely that she would have forgiven the larger rent payment. While the respondent was short of funds during the parties’ relationship, there is also insufficient evidence before me to conclude the applicant was in a financial position to forgive a month’s rent. All of this supports the conclusion that the applicant never gave the respondent the gift of a “reprieve” from paying the January rent.

25. Given the parties' agreement about the amount of the monthly rent, I find the respondent must pay the applicant \$2,235 for 3 months' rent, plus the \$107.67 for utilities. Together, this totals \$2,342.67.
26. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$2,342.67, from August 1, 2018, a date I consider reasonable given it was the date the applicant pressed the respondent for payment. This equals \$31.89.
27. The applicant was successful. In accordance with the Act and the tribunal's rules, I find she is entitled to reimbursement of \$125 in tribunal fees. The applicant did not claim dispute-related expenses, although in her argument she indicated she spent \$147 on serving the respondent with the Dispute Notice. However, the applicant as noted made no formal claim and provided no receipts or invoices for the expenses. So, I make no order for reimbursement of dispute-related expenses.

ORDERS

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,499.56, broken down as follows:
 - a. \$2,342.67 in debt,
 - b. \$31.89 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
29. The applicant is entitled to post-judgment interest as follows.
30. 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.

31. 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.

Shelley Lopez, Vice Chair