



Civil Resolution Tribunal

Date Issued: May 27, 2019

File: SC-2018-005275

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Prowal v. Mcnea*, 2019 BCCRT 641

B E T W E E N :

Shelagh Prowal

APPLICANT

A N D :

Belinda Mcnea

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about money owing for room and board. The applicant, Shelagh Prowal, says that she had an agreement with the respondent, Belinda Mcnea, to provide a room and meals in her home in exchange for a fee. The applicant says that the respondent provided her only partial payment and owes her \$920.00. She seeks an order for the payment of this amount, as well as for the return of some

property she says the respondent took from her home. The respondent denies that she owes the applicant any money or that she took any of the applicant's property.

2. The parties are 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. Here, I find that I am properly able to assess and weigh the 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 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.
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 make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.
7. Section 4(c) of the *Residential Tenancy Act* (RTA) says that the RTA does not apply to accommodations in which a tenant shares bathroom or kitchen facilities with the owner of the accommodation. The parties agree that the applicant was renting a room in the home owned by the respondent, and that bathroom and kitchen facilities were shared. Accordingly, I find that this dispute is a contractual claim under the tribunal's small claims jurisdiction.

ISSUES

8. The issues in this dispute are:
 - a. whether the respondent should be ordered to pay the applicant \$920.00; and
 - b. whether the respondent should be ordered to return property to the applicant.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
10. The applicant advertises rooms for rent in her home. The respondent moved into the applicant's home on January 1, 2018. The respondent moved out of the applicant's home at the end of January and did not live there in February of 2018. She returned in March of 2018 on the same terms as the previous arrangement. The applicant says that she asked the respondent to leave in June of 2018 as she

had failed to pay the full amount of her room and board. The respondent denies that she was in arrears.

11. There is no written contract setting out the payment the respondent would provide to the applicant. The parties agree that they had a verbal agreement, but disagree as to its terms. The applicant says her standard monthly rental charge for a room is \$400, plus an additional \$250 for board. She says that the board charge is negotiable, and this is consistent with the advertisement put into evidence by both the applicant and the respondent. According to the applicant, she reduced the respondent's board fee to \$200 per month as the respondent did not eat breakfast. Because the respondent was in financial difficulty, the applicant offered to reduce the rent by \$250 in exchange for the respondent painting 1 room in the home per month. This reduced the monthly charge from \$600 to \$350.
12. The applicant says that the respondent fulfilled their agreement by painting the kitchen in January of 2018. However, she did not paint any rooms in March, April or May of 2018. The applicant states that she asked the applicant in May of 2018 to either paint 3 rooms or provide the additional \$250 per month. When the respondent failed to do either, the applicant asked her to leave. She claims \$750 in outstanding rent.
13. The respondent does not dispute that \$350 was the agreed-upon amount, but says that it did not include board as she purchased her own food. She also says that this amount did not include a credit for painting, but rather that the applicant offered to pay her \$250 for each room she painted. She says that she painted 1 room but did not receive the anticipated payment, so she did not agree to paint any more. She says she paid the applicant \$350 in cash each month she was staying at the home, in full satisfaction of their agreement.
14. The parties submitted evidence in support of their positions. The respondent provided banking records to show that cash withdrawals of \$360 or \$380 close to the time her rent was due. The applicant provided evidence from current and former tenants about their arrangements with the applicant. These individuals cited monthly

rents of \$400, with one receiving a \$250 reduction in rent for painting 1 room per month. Some of these individuals stated that they saw the respondent eating meals that the applicant prepared, in support of the applicant's position that board was included in the respondent's agreement. One tenant says that he was present for all negotiations and monetary interactions between the applicant and respondent, but the respondent disputes this assertion and it was not specifically addressed by the applicant.

15. The respondent says simply that she negotiated a lower rent with the applicant, without providing specific details as to the calculation of that figure. As discussed above, the applicant's advertisement states that board or small pets may be negotiated, but it does not indicate that the monthly rental amount of \$400 is negotiable. This is consistent with the evidence from the other tenants that their rental amount was \$400, with a deduction taken in exchange for painting. I find this evidence persuasive, and it supports the conclusion that this is the amount of rent that the applicant charged the respondent. I also find that the parties' arrangement was inclusive of board, despite the fact that the respondent's bank statements show several purchases at grocery stores and restaurants.
16. I find that it is more likely than not that the applicant's description of the contract reflects the parties' agreement. Thus, the respondent owed a total of \$600 per month for room and board, with only \$350 per month paid between March and May of 2018. The respondent admits that she did not paint any additional rooms during this time frame. Therefore, a monthly shortfall of \$250 exists for each of March, April and May of 2018. I find that the respondent owes the applicant \$750 under their agreement.
17. The applicant also says that she made \$110 in loans to the respondent, in the form of \$20 for gas and \$90 for "teeth", and seeks an order in this amount. The applicant also listed \$660 in loans for other items that she says she does not expect to be repaid. The respondent denies that she borrowed the \$110 from the applicant. She cited evidence to support that she paid her own dental bill through a debit

transaction and bank statements that show consistent purchases at gas stations. The respondent explains that the \$20 in gas money was paid in exchange for driving the applicant.

18. Based on the evidence before me, I find that the applicant has not proved that she made the described loans to the respondent. I dismiss this portion of the claim.
19. The applicant says that the respondent took property from her home in the form of hangers and a laundry hamper that she values at \$60. The respondent denies that she took any of the applicant's property. She denies knowing anything about the laundry hamper, and says that she has her own hangers which she brought into the applicant's home and took with her when she left.
20. While I accept that the hamper and hangers may no longer be in her home, I find that the applicant has not established that the respondent took these items. She also did not establish that the missing items had a value of \$60 as she claimed. I dismiss this aspect of the claim.
21. I have found that the applicant is entitled to \$750 from the respondent. She is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from May 31, 2018, this amounts to \$12.14.
22. 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. However, the applicant did not make a claim for reimbursement of tribunal fees or dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$762.14, broken down as follows:
 - a. \$750.00 pursuant to the agreement; and

b. \$12.14 in pre-judgment interest under the *Court Order Interest Act*.

24. The applicant is entitled to post-judgment interest, as applicable.
25. 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.
26. 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.

Lynn Scrivener, Tribunal Member