



# Civil Resolution Tribunal

Date Issued: June 6, 2019

File: SC-2018-008818

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Neill v. John*, 2019 BCCRT 689

**BETWEEN:**

Tanya Neill

**APPLICANT**

**AND:**

Benjamin John

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

### INTRODUCTION

1. This is a dispute about shared accommodation. The applicant, Tanya Neill, says that her landlord, the respondent Benjamin John, did not abide by their rental agreement. She claims \$5,000 in damages. The respondent denies that he failed to comply with the agreement, and denies that he owes the applicant any damages.

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. 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.
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 room rental agreements in evidence show that the applicant was renting 2 bedrooms in the respondent's home with a shared living

area and kitchen facilities. The evidence before me suggests that the Residential Tenancy Branch declined to hear this dispute. I find that the RTA does not apply, and this dispute is a contractual claim under the tribunal's small claims jurisdiction.

## **ISSUE**

8. The issue in this dispute is whether the respondent must pay the \$5,000 in damages claimed by 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 and the respondent entered into a series of short-term agreements for shared accommodation. It is not clear when this arrangement commenced. The room rental agreements signed by the parties contemplated the payment of \$775 per month for 2 bedrooms in the respondent's residence, with a shared kitchen and living area. The agreements ran from the first day of the month to the last day of the month of the rental period. Most agreements were for a term of 1 month, but some appear to run for a longer period of time. Each agreement provided that the applicant must move out by 5:00 p.m. on the last day of the month. All agreements are signed by the parties on the second page, and some agreements feature the parties' initials at the bottom of the first page.
11. The last agreement in evidence is dated June 27, 2018 for the term of July 1, 2018 to July 31, 2018. This agreement also stated that rent in August would increase to \$975. No agreement was signed for August of 2018. The respondent says the applicant did not leave on July 31 as required by the June 27, 2018 agreement so he served her with an eviction notice. The applicant states that she has declined to sign additional agreements as she believes the respondent is "forging" them.

12. The applicant says she never agreed to share space with the respondent, and the respondent breached the rental agreement by entering her home without permission. She also says the respondent never provided her with the cable contemplated by their agreement. The applicant states that the respondent took away her parking spot, internet, and laundry access. She also states that the respondent withheld her mail for a period of time, then told her that she could no longer receive mail at the residence.
13. The applicant says the respondent tried to raise her rent by \$200 contrary to their agreement. According to the applicant, as the respondent has continued to accept her rent payments, she felt that the eviction notice was “null and void”. The applicant provided a statement from a third party who reported that he heard the respondent tell the applicant that she should both “just stay” and “be out right away”.
14. The respondent says the applicant’s claims are not accurate. According to the respondent, the rental agreements are clear and the applicant breached the agreement by not leaving at the end of July and refusing to vacate the premises. The respondent’s position is that there is no valid rental agreement in place and the applicant must move out of the residence immediately.
15. Although the applicant states that she never signed an agreement for shared space, this is not consistent with the documentation provided by the applicant and the respondent, which specifically identifies the kitchen and living areas as shared with the landlord. The evidence before me does not establish the applicant’s assertion that any of the agreements were forged or altered by the respondent.
16. As noted above, the terms of the RTA, including those concerning the increase of rents, do not apply to the parties’ circumstances. The parties’ relationship is governed entirely by the terms of their agreements. These agreements require that the applicant vacate the residence at the end of each rental period, and do not contain terms which would permit the applicant to continue to occupy the residence in the absence of a new agreement. As the respondent has not made a counterclaim for any damages flowing from the applicant’s ongoing presence in the

residence, I will not address this issue. I note that nothing in this decision restricts the respondent from claiming unpaid rent.

17. The applicant's claim that the rental agreement included internet, cable television, parking and laundry is not consistent with the documentation provided by the parties. The agreements specifically state that there is no parking available on the property, including in front of the respondent's home or garage. The agreements contain the provision "What is included in the rent: Stove and Oven, Refrigerator, Window Coverings, Water, Electricity, Heat, Carpets, Garbage Collection, Recycling Collection." There is no mention of additional amenities or services in this clause or elsewhere in the agreements.
18. Even if I had found that the rental agreement contained provisions for the amenities and services listed by the applicant, I would find that she had not proven her claims for damages. In her Dispute Notice, the applicant said that laundry costs her \$50 to \$80 per month at the laundromat. In her submissions, she claimed this expense at \$105 per month, without explaining the discrepancy. The applicant also claimed damages for what it would have cost to have basic cable and internet connected in the residence. However, she did not incur these expenses and would not be entitled to reimbursement. The applicant also claimed \$1,000 for the loss of a parking spot, but she has not established that she incurred any parking expenses.
19. The applicant also claimed amounts of \$1,000 and \$1,589.78 for towing and impound fees that she says she incurred as a result of not receiving her mail. The room rental agreements do not contain any terms about mail delivery. While I accept that the applicant experienced some delays in receiving her mail, I find that she has not established that the respondent deliberately withheld or otherwise interfered with her mail. Further, I find that she has not established that she sustained damages as a result of the respondent's handling of her mail.
20. I find that the applicant has not met her burden of proof to establish that the respondent breached any of the room rental agreements, or that she suffered any associated losses. Accordingly, I dismiss her claims for damages.

21. 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. The applicant did not pay tribunal fees, but I would not have awarded reimbursement as she was not successful.

## **ORDER**

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

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Lynn Scrivener, Tribunal Member