



Civil Resolution Tribunal

Date Issued: June 21, 2019

File: SC-2019-001214

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Huang v. Tian*, 2019 BCCRT 759

BETWEEN:

YUNRU HUANG

APPLICANT

AND:

TONY TIAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a claim for a refund of a deposit of \$340 between roommates. The applicant, Yunru Huang, rented a room from the respondent, Tony Tian.

2. The applicant moved into the respondent's home on November 1, 2018, and moved out on November 29, 2018. There was no written agreement. The rent of \$680 was to be paid on a month-by-month basis.
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 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.

8. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* (RTA) does not apply to this dispute because the RTB refuses jurisdiction over 'roommate disputes'. As the parties shared a kitchen, I find that they were roommates and that the dispute is within the tribunal small claims jurisdiction, as set out in section 3.1 of the Act.

ISSUE

9. Is the respondent required to refund the applicant's \$340 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 says that the applicant agreed to give two months' notice and failed to do so. Only two weeks after she moved in, the applicant decided to move out. She did not give enough notice for the respondent to find a suitable replacement tenant. He accepted a short-term tenant who stayed for only three days at the end of November, 2018.
12. The respondent says the applicant's former bedroom is still vacant. He also says the applicant damaged her bedroom walls.
13. The applicant says that if the respondent had told her she would not receive her deposit back when she moved out, she would have stayed as long as necessary. She says the respondent is not credible because while he says he could not find a suitable replacement, he forced the applicant to move out a day earlier than she wanted to accommodate his new roommate.
14. The parties' rights and obligations are governed solely by their agreement. As there was no written agreement, I must determine, based on the limited evidence, the

terms of the parties' verbal agreement. While a verbal agreement is still enforceable, it is harder to prove than if it had been in writing.

15. It is not clear whether the deposit the applicant paid the respondent was a damage deposit or a security deposit. Although the respondent agreed, for the purposes of this dispute, that "the damage deposit was \$340," I recognize that English may not be his first language and he may not appreciate the difference between a damage deposit and a security deposit.
16. If the funds were a damage deposit, the respondent has no basis to keep the deposit because apart from the respondent's assertion, there is no evidence before me that the applicant damaged her bedroom walls – an assertion that the applicant denies. For instance, I would have expected photos of the damaged walls.
17. However, based on the respondent's submissions, I infer that he argues that the funds were a security deposit in case the applicant vacated with insufficient notice.
18. The applicant denies that she was told she had to give two months' notice. She submitted two audio recordings apparently capturing conversations between the parties. The recordings are not in English and the applicant did not provide a transcript or a translation, so I could not understand them. The applicant submits that in the recordings, made on November 13 and November 22, 2018, the respondent agreed to refund the applicant's deposit when she moved out.
19. The respondent says when the applicant decided to move out after two weeks, he said he needed at least one month of notice. However, the respondent did not address the two audio recordings. On balance, I accept that the recordings contain statements generally consistent with how the applicant has described them.
20. I find that the respondent verbally agreed to refund the applicant's deposit when she moved out at the end of November 2018. This agreement overrides any prior agreement the parties may have had about the deposit. This contractual amendment did not require fresh consideration (see *Rosas v. Toca*, 2018 BCCA 191). The respondent's subsequent failure to find a long-term replacement

roommate does not remove his commitment to refund the deposit. I find the respondent must refund the applicant's \$340 deposit.

21. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* calculated from November 30, 2018, which was the last day she was at the respondent's residence.
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. The applicant was successful. I find the applicant is entitled to reimbursement of \$125 in tribunal fees. She did not claim any dispute-related expenses.

ORDERS

23. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$479.17, broken down as follows:
 - a. \$340 to refund the deposit,
 - b. \$14.17 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 tribunal fees.
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.

Micah Carmody, Tribunal Member