Civil Resolution Tribunal

Date Issued: August 14, 2019

File: SC-2019-000113

Type: Small Claims

Civil Resolution Tribunal

Indexed as*: Miller v. Malaguti,* 2019 BCCRT 967

B E T W E E N :

AMANDA HOFFELE MILLER

APPLICANT

A N D :

LUCA MALAGUTI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute between former roommates. The applicant, Amanda Hoffele Miller, says the respondent, Luca Malaguti, agreed to refund her $700 security deposit but then failed to do so.

2. The respondent says the applicant breached the parties' agreement by moving out with only 4 days' notice, and that the $700 security deposit was always intended to cover not only damage but also if the applicant moved out without adequate notice.

3. The 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* (CRTA). 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. In some respects, this dispute amounts to a "she said, he said" scenario with both sides calling into question the credibility of the other. 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.

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 do one or more of the following where permitted under section 118 of the CRTA: 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.

Tribunal Jurisdiction over Residential Tenancies

8. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, I accept the *Residential Tenancy Act* (RTA) does not apply to this dispute because the RTB refuses jurisdiction over "roommate disputes", such as this one. For this reason, I find the dispute is within the tribunal's small claims jurisdiction, as set out in section 118 of the CRTA.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to the return of her $700 security deposit under the parties' roommate agreement.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

11. The parties started being roommates in around March 2018, although nothing turns on the precise date. There is no written tenancy agreement in evidence, and based on the parties' submissions it appears their roommate agreement was a verbal one. As discussed below, this dispute turns on whether the applicant was required to give 30 days' notice before ending her tenancy.

12. It is undisputed that the applicant paid the respondent a $700 “security deposit” on March 16, 2018. This is what the applicant wants refunded in this dispute. Her monthly agreed rent share was $1,400, though as of October or November 2018, there was a reduction of $150 as a third party was staying in the home. In other words, as of November 2018, the applicant’s rent share was $1,250.

13. The applicant says that on October 26, 2018 she and the respondent agreed that their roommate agreement would end and that he would refund her $700 security deposit. I find this is reflected in the parties’ text messages, detailed below. The applicant moved out on October 29, 2018 and returned her keys on November 1, 2018.

14. The respondent says the $700 security deposit was intended to cover property damage, non-payment of rent or breaking the roommate agreement early. The respondent says the applicant moved out with only 4 days’ notice and so the applicant should pay her November 2018 rent. In other words, he wants to retain the $700 security deposit and apply it to the November 2018 rent.

15. The crux of this dispute is that the respondent says that when he agreed to refund the applicant the $700 security deposit, he did not yet know the applicant would move out only 4 days later on October 31, 2018 and would not pay November 2018 rent. I reject this submission, given the parties’ messages in evidence.

16. The respondent submits that on March 15, 2018 the parties made a verbal agreement that 30 days’ notice would be given for termination of the roommate agreement. I disagree. I find the weight of the evidence indicates the respondent initially agreed to the deposit’s return, and then later reviewed the RTA and took the position that the 30-day notice provision in the RTA applied. As the applicant had not given 30 days’ notice, the respondent then refused to return the security deposit. As noted above, the RTA does not apply and I find the parties’ text messages do not support a conclusion they ever agreed to adopt the RTA provisions as part of their agreement. My further reasons follow.

17. The respondent relies on a statement from his partner, CH, who also lived in the residence. CH says the applicant had verbally agreed to give 30 days' notice. The applicant questions the validity of CH's statement as she says the metadata shows the applicant drafted it and there is some question about when it was authored. Quite apart from any issue about the metadata, I reject the respondent's and CH's evidence about the 30 days' notice requirement. As discussed below, I prefer CH's documented statements in October 2018 when the applicant was moving out.

18. CH messaged with the applicant on October 26 and 27, 2018 and on both dates clearly acknowledged a conflict between the applicant and the respondent. The exchange shows CH knew the applicant was planning to move out immediately and that the applicant wanted money back. CH made no mention of a 30 days' notice requirement and I find the tenor of the exchange shows CH did not believe there was one.

19. On October 26, 2018 at 4:06 p.m., the respondent asked the applicant for her full share of November's rent, as she had only paid $550. The respondent messaged "you'll get your deposit back, we all will, but that's not the point … please just pay the amount you're suppose[d] to for rent this month". I find the context is clear that "this month" referred to November. The applicant replied that her $700 security deposit could be applied to the rent owing. The respondent refused and said if the applicant did not send him $700 for the rent balance, she could not live there. The applicant asked for the $550 rent "+ security deposit back". The respondent replied, "ah ok that's fine … we can arrange that for sure if that's what you want" and then asked for a meeting so things could end amicably. I find the tenor of the exchange shows the respondent knew the applicant was moving out. There was no mention of a 30 days' notice requirement.

20. On October 27, 2018 at 9:16 a.m. the applicant messaged CH that she had still not heard from the respondent about receiving her "deposit and rent". CH replied, "he told me he was going to send it to you but I can send you $550 if you want" and the respondent could repay CH. The applicant then messaged asking if the respondent

would “send the $700” and CH replied, “honestly, we didn’t really talk about it because [third party name and I] went hiking and came home late. But I’m sure [the respondent] send you after he sees the room” (quotes reproduced as written, except where noted).

21. On October 27, 2018 at 10:02 p.m. CH e-transferred $550 to the applicant, which as referenced above was a refund of what the applicant had paid towards her $1,250 share of the November 2018 rent. While the respondent in one submission says CH did this as a courtesy gesture, elsewhere the respondent argues that he and CH together decided to refund the applicant the $550 partial rent payment. I find the respondent together with CH agreed to repay the applicant the $550 because they accepted the applicant was moving out by the end of October 2018 and so there was no rent payable for November. This supports a conclusion that there was no 30-day notice requirement.

22. I agree with the applicant that CH’s messages in October 2018 support the applicant’s position that the security deposit was only to be used for property damage. There is no suggestion the applicant caused any property damage. I also find the messages show that the applicant’s planned imminent departure at the end of October 2018 was not a surprise. The fact that CH wrote that she and the third party might be moving out on November 1, 2018 is further support for the conclusion that 30 days’ notice was not expected.

23. In summary, I find the October 27, 2018 exchange between the parties and between the applicant and CH shows the respondent’s agreement to repay the November 2018 rent and the $700 security deposit, knowing the applicant was moving out by October 31. I find there was no 30 days’ notice requirement. The respondent must refund the applicant her $700 security deposit, plus pre-judgment interest under the *Court Order Interest Act* (COIA) from March 16, 2018. This equals $16.03.

24. In accordance with the CRTA and the tribunal's rules, I find the successful applicant is entitled to reimbursement of $125 in paid tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

25. Within 14 days of this decision, I order the respondent to pay the applicant a total of $841.03, broken down as follows:

    a. $700 in debt,

    b. $16.03 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

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

27. Under section 48 of the CRTA, 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 CRTA, 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