



# Civil Resolution Tribunal

Date Issued: August 20, 2019

File: SC-2019-001751

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Antaya v. Wutzke*, 2019 BCCRT 989

**BETWEEN:**

KALEY ANTAYA

**APPLICANT**

**AND:**

AMY WUTZKE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

### INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant, Kaley Antaya, rented one bedroom in the respondent, Amy Wutzke's 3-bedroom apartment for \$900 per month. The respondent had leased the whole apartment from a landlord who is not a party to this dispute.

3. On March 5, 2018, the applicant paid the respondent \$400 as a damage deposit. The applicant moved in on March 30, 2018 and moved out on June 30, 2018.
4. The applicant claims a total of \$900, for the return of her \$400 damage deposit, a \$400 “penalty”, and \$100 in filing fees she paid to the Residential Tenancy Branch (RTB), as discussed below.
5. The respondent denies the applicant’s claims. The respondent says the applicant failed to give 30 days’ notice as required and did not clean the apartment to a move-in standard.
6. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. The tribunal does not generally take jurisdiction over residential tenancy disputes, as these are decided by the RTB. The RTB has exclusive jurisdiction over matters falling within the *Residential Tenancy Act* (RTA). However, the RTB refused to take jurisdiction over this dispute because it is between roommates. In these circumstances, I find this dispute falls within the tribunal’s small claims jurisdiction over debt and damages.
9. 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. 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

10. 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.
11. 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.
12. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - 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.

## **ISSUES**

13. The issues in this dispute are:
  - a. Is the respondent required to return the applicant's \$400 deposit?
  - b. Is the respondent required to pay the applicant a \$400 penalty?
  - c. Is the respondent required to pay the applicant \$100 in RTB filing fees?

## **EVIDENCE AND ANALYSIS**

14. In a civil claim like this one, the applicant must prove her claims on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
15. The parties submitted a lot of information about the respondent's challenges with former roommates and their own challenges as roommates. I have not addressed all their submissions on these challenges. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

### **Is the respondent required to return the applicant's \$400 deposit?**

16. On March 6, 2018, the parties entered into a rental agreement by email. The agreement provided that the respondent would retain the applicant's \$400 deposit until move-out. Further, it provided that the respondent would refund the deposit in full "upon move out walk through" unless the applicant gave less than 30 days written notice "and/or" failed to "leave the space at least as clean as [she] found it." The agreement also includes the rent payment terms and house rules around cleaning and roommate etiquette.
17. Shortly after the applicant paid her deposit, a 3<sup>rd</sup> roommate gave notice and moved out. In May, the respondent rented the 3<sup>rd</sup> bedroom to someone new who left shortly after moving in. The respondent then decided to rent the 3<sup>rd</sup> bedroom as an Airbnb and advertised the 3<sup>rd</sup> bedroom for some dates in June.
18. The applicant says the respondent gave her no notice before she advertised the 3<sup>rd</sup> bedroom for rent through Airbnb in June.
19. The respondent says she asked the applicant if she would be comfortable renting out the 3<sup>rd</sup> bedroom on Airbnb for "the summer". She says the plan was to get another long-term roommate for September 1, 2018. She says the applicant agreed. She says the applicant "thanked me for asking her and for offering her a \$75

discount off of her rent”. The respondent says that shortly before the first Airbnb guest was to arrive, the applicant changed her mind and decided she was not ok with Airbnb. The applicant denies that she had ever agreed to renting the room through Airbnb. She says having strangers in her home would jeopardize her safety and possessions.

20. The parties’ text messages show they regularly communicated by text about roommate related issues. I find the only text message relevant to the Airbnb decision was on June 6 or 7, 2018. The applicant wrote in her text, “I never gave my consent for you to rent out the other room as an Air BnB (illegal). The conditions of me moving were completely false. If I’m forced to find another place to live, I will be filing a small claims against you.” The respondent replied that the Airbnb is legal and wrote, “Having a roommate...leave without notice totally shocked me and put me out \$900! You were completely insensitive to this matter. You agreed to have the room rented out for July and I needed to push that forward to try and recoup the cost. You agreed to have a rent decrease of \$75 (my courtesy for you) for July as an inconvenience fee/ thank you.” The applicant did not substantively reply. By text, the respondent then informed the applicant that she has already rented the room through Airbnb for some days in June. I find the respondent rented the bedroom to Airbnb guests despite the applicant’s objection.
21. Based on both parties’ evidence, I find the applicant did not agree to using the 3<sup>rd</sup> bedroom as an Airbnb for June. I also find the respondent gave no notice that it would be rented as an Airbnb in June. I find the timing is important. Had the respondent waited to rent the room as an Airbnb in July, this would have allowed the applicant some time to potentially move out with notice if she did not agree to the Airbnb.
22. The Airbnb ads in evidence show that the respondent rented the 3<sup>rd</sup> bedroom to “guests” for a nightly fee. I find this type of living arrangement is different from the March 6, 2018 rental agreement. I find the arrangement under the rental agreement was that each rented room in the apartment would be a long-term rental. The rental

agreement describes three roommates sharing a space long term as evidenced by the 30-day notice period. I find the living arrangement of guests staying nightly through Airbnb is more like a hotel, with strangers coming in and out. I find that the respondent unilaterally changed the nature of the parties' living arrangement and breached the rental agreement when she rented the bedroom on Airbnb in June. Based on the breach, I find that the respondent is not entitled to rely on the 30-day notice clause to withhold the deposit. This this reason I have not dealt further with the parties' submissions on the timing of the notice.

23. I turn now to the cleanliness of the apartment on move-out. The respondent admits that the applicant did some cleaning, but disputes that it was to move-in standard. It is undisputed that the respondent performed no walk-through, either at the beginning of the applicant's tenancy or when she moved out. I find the walk-throughs were implied by the parties' agreement to set the standard. Without establishing the standard, I find the respondent cannot rely on the "move-in standard" clause to withhold the deposit.
24. The evidence shows the respondent did not inspect the apartment herself until several days after the applicant had moved out. Instead, the respondent had her friend check on the apartment to make sure there was no damage. He found there was none. In the friend's September 21, 2018 witness statement, he said it was "obvious" that the applicant had cleaned. He said that it was not to what he "assumed was the condition" at move-in. I put no weight on the witness's opinion. It is undisputed that he had not seen the apartment's move-in condition. Further, he is the respondent's friend, his statement is dated months after the applicant moved out and his statement is not supported with any photographic evidence.
25. The applicant submitted photographs and videos of herself cleaning the apartment for move-out. I find this evidence shows that the applicant left her bedroom and bathroom empty and clean. I find the rest of the apartment was as clean as the photographs that the respondent posted in her Airbnb ads, which I infer reflect the respondent's threshold for cleanliness. I am satisfied on the evidence that the

applicant cleaned the apartment to a reasonable standard and there was no evidence of any damage.

26. I am satisfied that the applicant is entitled to her damage deposit. I find the respondent must refund the applicant \$400 for the damage deposit.
27. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the damage deposit from June 30, 2018, the move-out date, to the date of this decision. This equals \$7.88.

***Is the respondent required to pay the applicant a \$400 penalty?***

28. Under the RTA, the landlord must pay a penalty of double the amount of the security deposit in certain circumstances. As discussed above, the RTA does not apply to this dispute and the applicant does not say that she suffered any loss other than the deposit. There is no evidence the parties ever agreed to a penalty when the tenancy started. I dismiss the applicant's claim for a \$400 penalty.

***Is the respondent required to pay the applicant \$100 in RTB filing fees?***

29. I dismiss the applicant's claim for RTB fees because I find it is was the applicant's responsibility to determine the correct venue to bring a dispute. The RTB is in control of its own process and its fees are part of that process. I find it was up to the RTB to determine whether it should refund fees or order another party to pay the fees. In any event, I find for this process, that the respondent is not responsible for the applicant's decision to initially file a dispute with the RTB rather than with the tribunal.

***Is the respondent required to pay fees and dispute-related expenses?***

30. Under section 49 of the CRTA, 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 on her primary claim for the damage deposit. In all of the circumstances, I exercise my discretion and find the

applicant is entitled to reimbursement of \$125 in tribunal fees. The applicant claimed no dispute-related expenses.

## **ORDERS**

31. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$532.88, broken down as follows:
  - a. \$400.00 as the damage deposit,
  - b. \$7.88 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 in tribunal fees.
32. The applicant is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
33. The applicant's remaining claims are dismissed
34. 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.
35. 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.

