



Civil Resolution Tribunal

Date Issued: August 21, 2019

File: SC-2018-008934

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McEvoy v. Peng*, 2019 BCCRT 992

B E T W E E N :

Eileen McEvoy

APPLICANT

A N D :

Qiong Peng

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute about a rent deposit between prospective roommates.

2. The applicant Eileen McEvoy seeks reimbursement of the \$460 deposit she paid the respondent Qiong Peng. The applicant decided not to rent the room, and the respondent refused to refund the deposit.
3. The respondent asks that I dismiss this dispute because the deposit was non-refundable. She also says the applicant's untimely withdrawal caused her to lose rental revenue.
4. Both parties in this dispute are self-represented.

JURISDICTION AND PROCEDURE

5. 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 that will likely continue after the dispute resolution process has ended.
6. 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.
7. 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.
8. 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.

Tribunal jurisdiction over roommate disputes

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

ISSUES

10. The issues in this dispute are:
- a. What were the terms of the parties' 'roommate' tenancy contract?
 - b. Did the applicant breach the contract?
 - c. If so, was the respondent entitled to keep some or all of the deposit?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant must prove her claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. The essential facts are not in dispute. On August 3, 2018, the applicant replied to the respondent's advertisement on the website 'Craigslist'. The respondent was looking for a roommate to share her rented 2-bedroom apartment.
13. The applicant viewed the apartment and told the respondent she wanted to move in.

14. On August 10, 2018, the applicant e-transferred the respondent a deposit of \$460, which was half of one month's rent. The applicant was going to move in on September 1, 2018.
15. On August 13, 2018, the applicant texted the respondent to say that she did not want to rent the room. The reason did not have anything to do with the respondent or the apartment. The applicant requested a refund of the deposit, and offered to help the respondent find a new roommate. The respondent replied "ok no problem. i will let you know."
16. On August 26, 2018 the applicant asked if the respondent had found someone to rent the room. After more unanswered text messages and an attempted phone call, the respondent replied on August 29. She said the deposit was non-refundable and was a holding deposit that would have become a security deposit once the applicant moved in.

What were the terms of the parties' contract and did the applicant breach the contract?

17. The applicant argues that because she did not sign a residential tenancy agreement, there was no contract and she was not bound to move in. She also argues that the parties never reached consensus on the meaning of "deposit", which was a fundamental term of the contract, and therefore there is no enforceable contract.
18. I reject the applicant's argument that there was no contract. A contract requires offer, acceptance, and consideration. The respondent offered a room for rent, the applicant accepted that offer verbally and by text message, and consideration or payment flowed in the applicant securing a room to rent in exchange for the deposit.
19. Both parties made submissions about whether the deposit was a 'holding deposit', a 'security deposit' or a 'damage deposit'. I find nothing turns on the label given to the

deposit now. What matters is the parties' mutual intentions at the time the deposit was paid.

20. There is no dispute that the parties did not discuss whether the deposit was refundable.
21. The respondent says when the applicant viewed the room she asked if the respondent had other offers, and she said there were 3 others wanting to rent the room long-term. The applicant did not deny this, and it is consistent with the text messages, so I find that the applicant was aware that the respondent was giving up the opportunity to rent the room to others. In that context, I find that the applicant understood that she was paying the deposit of \$460 to 'hold' the room for her until she moved in.
22. In the context of residential tenancies under the RTA, paying a deposit means the tenancy has started and the landlord cannot rent the unit to another tenant. The tenant 'secures' the tenancy by paying the deposit. Even if a tenant does not move in, they are responsible for their obligations under the tenancy. If a prospective tenant ends the tenancy before the end of the term, she breaches the contract. In that situation, the landlord is generally entitled to damages if loss is proven, subject to the requirement that the landlord must mitigate her damages by trying to secure a new tenancy.
23. Although this agreement is not governed by the RTA, I find that the same principles apply to roommate situations where one roommate is in effect serving as the landlord to an applicant roommate. Based on the context and the parties' text messages exchanged, I find both parties intended to be bound by the deposit to secure the room rental. Accordingly, when the applicant withdrew, she breached the parties' contract. This does not mean, however, that the respondent was entitled to keep the deposit.
24. Although the applicant did not raise it, I will briefly address the respondent's text reply to the applicant's withdrawal, which was, "ok no problem. i will let you know." I

do not interpret this to mean that the respondent waived her right to claim damages for the applicant's breach of contract. I find that by using the words "I will let you know," the respondent made it clear that she had not made up her mind about returning the deposit.

Was the respondent entitled to keep some or all of the deposit?

25. The respondent did not file a counterclaim for losses she suffered because of the applicant's breach of contract. However, she did argue that she is entitled to keep the deposit because she suffered such losses. Accordingly, I will consider to what extent, if any, the respondent suffered losses that can be set off against the deposit.
26. The respondent says that when the applicant advised that she no longer wanted the room, the respondent "immediately" texted or emailed the 3 others who wanted to rent the room and told them that the room had been rented out. However, the respondent did not put those emails or text messages in evidence. The respondent says the 3 prospective roommates had all secured other rental housing.
27. The respondent said that because it was the middle of the month she had a hard time finding another roommate who met her criteria and wanted to rent long-term. The respondent said she was looking for a long-term roommate, and the applicant was looking to stay long-term. The applicant did not dispute this, so I accept it as true. However, an intention to be long-term roommates is not a fixed term tenancy. There is no evidence of an agreement regarding the required notice period. Accordingly, I find that the applicant could have given the standard 1-month notice of her intention to move out. She is not liable for any lost rent beyond September 2018.
28. The respondent accepted a short-term roommate. She did not state when the short-term roommate moved in, but because the respondent has not claimed any lost rent for September 2018, I infer that the short-term roommate paid full rent for September 2018. The respondent says the short-term roommate moved out in December 2018.

29. The respondent says she received limited applications in December 2018 and January 2019 because it was winter season. She was unable to find another suitable long-term roommate until the end of January 2019. As such, she lost rental revenue for “the majority of January 2019.” She says that she lost \$320 for January 2019. In addition, she says she lost \$50 per month on an ongoing basis because she had to reduce the rent from \$920 to \$870.
30. Even if the applicant were liable for more than 1 month of lost rental income, the respondent had 4 months to find a suitable long-term replacement. The respondent provided no evidence of her efforts to find a replacement, such as copies of the advertisements she placed. She also did not provide any evidence to confirm that she reduced the rent, such as copies of cheques or a statement from a roommate. She has not proven the damages she has claimed.
31. In summary, I find that the respondent was only entitled to keep any portion of the applicant’s deposit necessary to offset the damages suffered because of the applicant’s breach of contract. The respondent has not established on the evidence any resulting damages or expenses incurred. Accordingly, the applicant is entitled to a full refund of the \$460 deposit.
32. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the balance of the deposit from August 13, 2018 when she asked for a refund, to the date of this decision.
33. 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 in this dispute, so I find she is entitled to reimbursement of \$125 in tribunal fees. She did not claim any dispute-related expenses.

ORDERS

34. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$593.26, broken down as follows:
- a. \$460.00 as reimbursement for the deposit
 - b. \$8.26 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
35. The applicant is entitled to post-judgment interest, as applicable.
36. 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.
37. 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.

Micah Carmody, Tribunal Member