Civil Resolution Tribunal

Date Issued: August 29, 2019

File: SC-2019-003277

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Philibert v. Crane*, 2019 BCCRT 1025

B E T W E E N :

MARIE FABIOLA PHILIBERT

APPLICANT

A N D :

PAULA CRANE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a dispute between former roommates.

2. The applicant, Marie Fabiola Philibert, rented a suite in the respondent, Paula Crane's house. The respondent leased the entire house from a landlord, who is not a party to this dispute.

3. The applicant says the respondent failed to return her security deposit when she moved out. The applicant claims of total of $850, for the refund of her $425 security deposit and a $425 "penalty", as discussed below.

4. The respondent denies she owes any refund or penalty. The respondent says the $425 not only secured the suite, but it also paid for December's rent.

5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. As a preliminary matter, the tribunal does not take jurisdiction over residential tenancy disputes, which 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', 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.

8. 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.

9. 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.

10. 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.

11. 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

12. The issues in this dispute are:

    a. Is the respondent required to return the applicant's $425 security deposit?

    b. Is the respondent required to pay the applicant a $425 penalty?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

14. On December 13, 2018, the applicant replied to the respondent's advertisement for a 2-bedroom suite with a shared kitchen. The respondent told the applicant that another woman was interested but she would rent it to whomever makes the first choice. After viewing the suite on December 13, the applicant paid $425 to secure the suite, which was equal to ½ the total monthly rent of $850.

15. The applicant says the $425 was a deposit to secure her room for January 1, 2019, though she moved in one day early on December 31, 2018. The respondent says the applicant took possession on December 15, 2018 and the $425 was rent payment for December 15 to 31, 2018. The respondent claims that she never took any money "over and above" the rent payment.

16. After the applicant moved in, the parties failed to get along. The respondent alleges that the applicant assaulted her on February 10, 2019, and she asked the applicant to move out by mid-March. There is no dispute that the applicant moved out of the suite on February 28, 2019.

17. The applicant denies the assault. I find the evidence is insufficient to establish the facts of the assault. In any event, the respondent does not say that she withheld the $425 because of the assault. Therefore, I find nothing turns on it. Instead, I find the dispute turns on whether the $425 was only a security deposit or whether it was also payment towards December's rent.

18. The respondent provided a witness statement from a person she shares a bedroom with that fully supports her version of events. I infer the witness is the respondent's spouse or romantic partner. Therefore, I also infer they have an interest in the outcome. The statement is undated and not signed. When I compare the statement to the documents in evidence, I find it is not entirely consistent with documents

created at the relevant time (December 2018 to March 2019). Therefore, I have put little weight on the statement in deciding this dispute. Instead, I have put most weight on documents created by the parties and at the relevant time.

19. I find the documents show that it is more likely than not, the applicant took possession of the suite on December 31, and not December 15, 2018. First, the parties signed a "cohabitation" (rental) agreement in January. The agreement says that the applicant had "paid $425 on December 15th, 2018 to hold the space and moved in December 31, 2018". It does not say the applicant took "possession" earlier or that the $425 was for payment of rent. Second, the applicant emailed the respondent on December 17, 2018 to ask permission to enter the suite to see how much space there was for her belongings. I find that the applicant would not have had to ask permission to enter if she had possession two days earlier, on December 15, 2018. Also, the respondent's reply email says nothing about the applicant already having possession. Instead, the respondent replied only, "yes that's fine by me". Third, the move-in emails show that the applicant did not physically move into the space until December 31, 2018.

20. The respondent claims that the cohabitation agreement does not reflect what the parties intended because she wrote it to deceive "welfare", which the applicant denies. The respondent says for this reason she wrote in the agreement that the $425 was a deposit (and not rent). However, I do not accept the respondent's submission on this point. I find it is inconsistent with the respondent's own email at move-out where she treated the agreement as valid. On February 27, 2019, the applicant emailed the respondent to tell her she cleaned and wanted her deposit refunded on move-out. The respondent replied the next day, "You used your security deposit of $425 on December 15th to hold the space until January 1st. That is all written in our agreement". I find the respondent was treating the $425 as a non-refundable security deposit and not rent. The email also says nothing about December rent. I find the respondent would have said so, if it was rent.

21. On the whole of the evidence, I find the agreement is valid as written. I find the $425 was only a security deposit and not payment for December rent. The agreement does not say the deposit is non-refundable. Since I find the respondent established no other reason to withhold it (and did not argue any other reason), I find the respondent must refund the applicant's deposit. I find the respondent must pay the applicant a total of $425 plus interest.

22. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the $425 from February 28, 2019, the move-out date, to the date of this decision. This equals $4.16.

23. As for the $425 penalty, I infer that the applicant is seeking a penalty as provided under the RTA. The RTA requires the landlord to pay a penalty of double the amount of the security deposit in certain circumstances. As mentioned above, the RTA does not apply to this dispute and the applicant does not say that she suffered any loss other than the security deposit. There is also no evidence that the parties ever agreed to a penalty when the tenancy started. Therefore, I dismiss the applicant's claim for a $425 penalty.

24. 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. I exercise my discretion on that basis to find the applicant entitled to reimbursement of her full $125 in tribunal fees. The applicant claimed no dispute-related expenses.

ORDERS

25. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of $554.16, broken down as follows:

    a. $425.00 as reimbursement for the security deposit

    b. $4.16 in pre-judgment interest under the *Court Order Interest Act*, and

c. $125.00 in tribunal fees.

26. The applicant is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.

27. The applicant's remaining claim is dismissed.

28. 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.

29. 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.

Trisha Apland, Tribunal Member