



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2019-002103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sood v. Williamson*, 2019 BCCRT 1035

B E T W E E N :

Ashutosh Sood

APPLICANT

A N D :

Darin Williamson

RESPONDENT

A N D :

Ashutosh Sood

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant and respondent by counterclaim, ASHUTOSH SOOD, rented a furnished bedroom from the respondent and applicant by counterclaim, DARIN WILLIAMSON, in a home with a shared bathroom and kitchen.
2. Mr. Sood says that after he moved out Mr. Williamson failed to return his \$325 security deposit within 15 days of the end of their agreement, and that Mr. Williamson is required to pay him \$650, which is double the amount of the security deposit. Mr. Williamson denies Mr. Sood's claims, and says Mr. Sood owes him \$661.83 under the agreement.
3. Mr. Williamson counterclaims and says that under the parties' agreement Mr. Sood owes him \$46.19 for "consumables," \$250 for professional cleaning costs, \$116.67 for 5 days of lost rental revenue, \$350 for replacement and delivery of a used mattress and box spring, \$223.97 for the cost of bedding, and \$565 for the cost of the incoming tenant's hotel accommodation, for a total of \$1,551.83. Mr. Sood says he does not owe Mr. Williamson anything.
4. Both parties 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 to a dispute 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of

interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.
9. The *Residential Tenancy Act* does not apply to this dispute because the Residential Tenancy Branch (RTB) refuses jurisdiction over "roommate disputes." I therefore find the tribunal has jurisdiction over this claim, as it falls within the tribunal's small claims jurisdiction over debt and damages.

ISSUES

10. The issues in this dispute are:
 - a. Is Mr. Sood entitled to payment of \$650 for Mr. Williamson's failure to return his \$325 security deposit?
 - b. Is Mr. Sood required to pay Mr. Williamson for consumables, professional cleaning costs, replacement and delivery of a mattress and box spring, replacement of bedding, lost rental revenue, or the cost of the incoming tenant's hotel accommodation, and if so, in what amount?

EVIDENCE AND ANALYSIS

11. In a civil claim like this one, Mr. Sood must prove his claim on a balance of probabilities. This means I must find it is more likely than not that his position is correct. Likewise, Mr. Williamson is responsible for proving his counterclaim.
12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
13. On August 7, 2018 the parties entered into an agreement for Mr. Sood to rent a bedroom from Mr. Williamson from August 7, 2018 to February 28, 2019 for \$650 per month. The agreement includes an addendum with numerous additional terms. While the agreement does not explicitly state that the parties would share a kitchen and bathroom, the evidence indicates that that was the arrangement.
14. I note the parties used the Residential Tenancy Agreement template provided by the RTB for their written agreement despite the fact that the RTA does not apply to roommates. Many of the clauses in the agreement refer to the RTA or its regulation. Where these references appear in clauses that are relevant to this dispute, I have addressed them further below.

Is Mr. Sood entitled to payment of \$650 for the respondent's failure to return his \$325 security deposit?

15. On August 6, 2018, under section 4.A. of the agreement, Mr. Sood paid Mr. Williamson a \$325 security deposit. Mr. Sood says he understood that he would be refunded the security deposit when he moved out as long as he left the property tidy, there was no damage, and he did not steal anything.
16. In early January 2019 Mr. Williamson issued Mr. Sood a notice of eviction which was subsequently cancelled. On January 5, 2019, the parties signed an agreement for Mr. Sood to move out by February 28, 2019 at 1:00 p.m., which he did.
17. According to section 4.1) c) of the agreement, Mr. Williamson was required to repay the security deposit to Mr. Sood within 15 days of the end of the agreement except in 2 circumstances. The first exception in section 4.1) c) i) was if Mr. Sood agreed in writing to allow Mr. Williamson to keep some or all of the security deposit for unpaid rent or damage. There is no evidence that Mr. Sood gave Mr. Williamson written permission to keep any amount of the security deposit for any reason, so I find this exception does not apply.
18. The second exception in section 4.1) c) ii) was if Mr. Williamson applied for dispute resolution under the RTA within 15 days of the end of the agreement to claim some or all of the security deposit. However, since the RTB does not take jurisdiction over 'roommate disputes', Mr. Williamson was unable to pursue that avenue of dispute resolution. I note that Mr. Williamson applied for dispute resolution with the tribunal by filing the Dispute Notice for his counterclaim on March 13, 2019, which was within 15 days of the end of the agreement. While the Dispute Notice does not specifically mention the security deposit, the nature of Mr. Williamson's claim is that Mr. Sood left the property untidy and damaged entitling him to compensation. Therefore, I find Mr. Williamson has followed the spirit of section 4.1) c) ii) of the agreement.

19. Section 4.3) of the agreement says that if Mr. Williamson did not comply with section 4.1) he must pay Mr. Sood double the amount of his security deposit. However, having found that Mr. Williamson has complied with the spirit of section 4.1) c) ii) of the agreement, I find that Mr. Sood is not entitled to double his security deposit. I find I must assess the merits of Mr. Williamson's counterclaim in order to determine whether Mr. Sood is entitled to a refund of all or part of his \$325 security deposit.
20. I note that in his Dispute Response for Mr. Sood's claim, Mr. Williamson says Mr. Sood owes him \$661.83 under the agreement. However, Mr. Williamson failed to address this in his submissions, evidence, or counterclaim, or to explain how he calculated this amount or what it is for. I therefore decline to address this allegation.

Is Mr. Sood required to pay Mr. Williamson for professional cleaning costs, replacement and delivery of a mattress and box spring, replacement of bedding, consumables, lost rental revenue, or the cost of the incoming tenant's hotel accommodation, and if so, in what amount?

Professional Cleaning and Replacement of Mattress and Bedding

21. Mr. Williamson claims \$250 for professional cleaning costs, \$223.97 for the cost of replacing the bedding, and \$350 for the cost of replacing a mattress and box spring.
22. The parties' agreement required Mr. Sood to Swiffer and mop all floors each Monday and Friday. Clause 1 of the addendum allowed Mr. Williamson to hire a cleaner at Mr. Sood's expense if required and without further notice. Clause 6 of the addendum says Mr. Williamson would provide Mr. Sood with bedding, which Mr. Sood was required to wash at least once every 2 weeks.
23. It is undisputed that Mr. Sood did not clean and mop the floors on Friday, February 15, 2019 as required by the agreement. On February 19, 2019 Mr. Williamson notified Mr. Sood by letter that he had hired a cleaning service to Swiffer and mop the floors since Mr. Sood failed to complete these chores the previous Friday. Mr.

Williamson submitted the February 19, 2019 invoice from the professional cleaner for \$50. Based on the relevant clauses in the agreement and the addendum, I find Mr. Sood is required to pay Mr. Williamson \$50 for this professional cleaning invoice.

24. Mr. Williamson submitted a March 3, 2019 invoice from a cleaner for \$150 to clean and disinfect the fridge, shampoo the carpet, and sanitize the bedding after Mr. Sood had moved out. He also submitted a March 9, 2019 receipt from Home Sense for \$223.97 for new sheets and bedding.
25. On February 19, 2019 Mr. Williamson sent Mr. Sood a letter setting out detailed instructions for cleaning before moving out. The letter told Mr. Sood to vacuum and shampoo the carpets, and said he could borrow Mr. Williamson's carpet cleaner, but was required to pay for the carpet shampoo and stain remover. He told Mr. Sood to wash the mattress protector, sheet set, and blanket in hot water in 3 separate laundry loads and to make up the bed. He told Mr. Sood to clean out and wipe down the fridge and freezer, and to wipe down all surfaces in the room leaving it as it was upon his arrival.
26. Mr. Sood says he did not receive this letter however, I find nothing turns on whether or not he received it. I find the instructions in the letter do not form part of the parties' agreement and that they are nothing more than requests which Mr. Sood was not legally required to follow.
27. It is undisputed that Mr. Sood moved out on February 27, 2019. He submitted photos he took of his bedroom and kitchen area before moving out which generally show that he left the property in a clean and tidy condition. However, some of the photos show that the beige carpeted floor in his bedroom had some small stains.
28. On February 28, 2019 at 1:00 p.m. Mr. Williamson conducted an inspection of the rental unit, but Mr. Sood did not attend. Mr. Williamson submitted photos he took during the inspection. Some of the photos show brown stains on a beige carpet and

baseboards, which Mr. Williamson says are from chocolate milk. Mr. Sood says these photos are not of the carpet in his bedroom.

29. Some of Mr. Williamson's photos show close-ups of the internal parts of the fridge that are smudged and dirty. Mr. Williamson says all shelves and shelf mouldings had to be removed from the fridge and run through the dishwasher, and the interior of the fridge and freezer had to be treated with vinegar solution and baking soda to remove the odour.
30. Without evidence of the condition of the fridge or carpets before Mr. Sood moved in, I am unable to determine if he caused any of the stains on the carpet or the smudges in the fridge. Nothing in the agreement or addendum required Mr. Sood to shampoo the carpet or clean the fridge during or at the end of his tenancy. Therefore, I find Mr. Williamson has not established that Mr. Sood is responsible for the professional cleaning costs of shampooing the carpet or cleaning the fridge.
31. Mr. Sood says he washed the bed sheets and pillow cases before he moved out, which Mr. Williamson disputes, but Mr. Sood admits he never washed the quilt or comforter. I find both the quilt and comforter form part of the bedding, and therefore Mr. Sood breached clause 6 of the addendum by not washing these items at least every 2 weeks. I find Mr. Sood is responsible for the portion of the \$150 March 3, 2019 cleaning invoice that relates to the bedding. The invoice is not broken down into tasks, but since there are 3 tasks on the invoice, on a judgment basis I find Mr. Sood is responsible for one third of the amount, being \$50.
32. Mr. Williamson says the odour and stains on the bedding justified the costs of cleaning and replacing the bedding. He says the odour from the bedding after Mr. Sood moved out was "indescribable," and it had visible bodily fluid stains. However, the only evidence of this is one photo showing a white stain on the bedding, but Mr. Sood says that stain was there when he moved in. In the absence of evidence of the condition of the bedding before Mr. Sood moved in, I find there is insufficient evidence that Mr. Sood caused damage to the bedding aside from failing to wash it

regularly, which I addressed above. Therefore, I find Mr. Sood is not responsible for the cost of replacing the bedding.

33. Mr. Williamson also submitted a March 4, 2019 invoice from the same cleaner for \$50 to vacuum the mattress, pretreat mattress stains, and steam clean the mattress. He also claims \$350 to replace the mattress but submitted only an undated e-transfer for \$150 with no explanation, and an online advertisement for a used mattress and box spring for \$200.
34. On the evidence before me I find Mr. Williamson has not established that Mr. Sood damaged the mattress to an extent that required professional cleaning, or at all. In particular I note Mr. Williamson did not submit photographs of the allegedly dirty or damaged mattress or what condition it was in at the start of the agreement. I therefore dismiss Mr. Williamson's claim for this \$50 cleaning fee and his claim for \$350 to replace the mattress and box spring.
35. In total, I find Mr. Sood is responsible for \$100 in cleaning fees.

Consumables

36. Mr. Williamson claims \$46.19 for consumables. Clause 2 of the addendum to the agreement states that any consumables (including toiletries, food, cleaning supplies, tissue, toilet paper, napkins, paper towels, laundry pods, dish soap, and dishwasher pods) are Mr. Sood's responsibility, and Mr. Sood is forbidden from using anyone else's consumables.
37. On January 4, 2019, Mr. Williamson sent Mr. Sood a text message asking him to replace a package of cigarettes and 2 air fresheners he had borrowed more than a month prior. On the same date Mr. Sood responded that he would replace Mr. Williamson's cigarettes soon, but he said he would not replace the air fresheners as he believed Mr. Williamson gave them to him. Mr. Sood says he has since replaced Mr. Williamson's cigarettes, but Mr. Williamson denies this and there is no evidence Mr. Sood did so.

38. Mr. Williamson submitted a March 1, 2019 receipt from Husky for \$123.27 for 10 packs of cigarettes which he says Mr. Sood never replaced. He also submitted an October 10, 2018 Amazon receipt for \$7.83 for Mr. Clean all-purpose cleaner, and a November 13, 2018 Amazon receipt for \$57.87 for Swiffer sweeping pad and duster refills and 2 air fresheners. The 2 air fresheners were \$11.99 each.
39. I find Mr. Williamson has submitted insufficient evidence to establish that Mr. Sood used up cleaner or Swiffer pads requiring replacement.
40. It is undisputed that Mr. Sood borrowed a package of cigarettes from Mr. Williamson, and I find it was Mr. Sood's responsibility to prove he replaced them, which he has not done. Therefore, I find Mr. Sood must pay Mr. Williamson \$12.33 for the cost of 1 package of cigarettes.
41. There is very little evidence about the circumstances surrounding Mr. Sood's use of the air fresheners, but Mr. Sood does not deny using them. Based on the parties' strained communications throughout the duration of the agreement, I find it unlikely that Mr. Williamson would give Mr. Sood anything for free, and clause 2 of the addendum clearly states Mr. Sood's responsibilities for using any consumables. Therefore, I find Mr. Sood must pay Mr. Williamson \$23.98 for the cost of replacing 2 air fresheners.

Lost Rental Revenue and Hotel Costs of Incoming Tenant

42. Mr. Williamson claims \$116.67 for 5 days of lost rental revenue and \$565 for the cost of his incoming tenant's hotel accommodation. However, Mr. Williamson did not explain why the new tenant could not move in earlier, or why the tenant needed to stay at a hotel. The only evidence Mr. Williamson submitted related to these claims is a tenancy agreement with a new tenant who was scheduled to move into the unit on March 5, 2019. I find this evidence does not explain or support his claims. Mr. Williamson is required to prove his claims for lost rental revenue and his incoming tenant's hotel costs. I find he has not done so, and I dismiss them.

43. In total, I find Mr. Sood is entitled to repayment of his \$325 security deposit less \$136.31 for cleaning fees, cigarettes, and air fresheners, for a total of \$188.69.
44. I note that section 4.1) of the agreement required Mr. Williamson to pay interest on the security deposit in accordance with the regulation, however since the regulation does not apply to this dispute, I find the requirement to pay interest under the regulation is not enforceable in this case. However, the *Court Order Interest Act* (COIA) applies to this dispute, and Mr. Sood is entitled to pre-judgment interest under the COIA on the amount owing calculated from March 15, 2019, which is the date Mr. Williamson was required to return the security deposit, to the date of this decision. This amounts to \$1.70.
45. 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. I see no reason in this case not to follow that general rule. Since both parties were partially successful, I find they must each bear their own tribunal costs. Neither party claims dispute-related expenses.

ORDERS

46. Within 14 days of the date of this order, I order Mr. Williamson to pay Mr. Sood a total of \$190.39, broken down as follows:
 - a. \$188.69 as repayment of his security deposit, less costs for cleaning, cigarettes, and air freshers, and
 - b. \$1.70 in pre-judgment interest under the *Court Order Interest Act*.
47. Mr. Sood is entitled to post-judgment interest, as applicable.
48. The balance of the parties' claims are dismissed.
49. 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.

50. 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.

Sarah Orr, Tribunal Member