



# Civil Resolution Tribunal

Date Issued: September 4, 2019

File: SC-2019-001176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ralston v. Blenkiron*, 2019 BCCRT 1043

BETWEEN:

CALE RALSTON

**APPLICANT**

AND:

ALISHA BLENKIRON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

### INTRODUCTION

1. This dispute is about the return of one month's rent, a total of \$750.00. The applicant, Cale Ralston, rented a room from the respondent, Alisha Blenkiron. The applicant says that the respondent kicked him out of the home on February 7 and claims a refund of the \$750.00. The applicant represents himself.

2. The respondent says that she did not kick the respondent out and that he is not entitled to the requested refund. The respondent represents herself.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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 "he said, she said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
5. 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.
6. 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 Residential Tenancies***

7. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch. However, the *Residential Tenancy Act* (RTA) does not apply to disputes between roommates. Also, section 4(c) of the RTA says it does not apply where the homeowner shares a kitchen or bathroom with the tenant. It is unclear on the evidence whether the respondent is the homeowner or whether this is a roommate dispute. As noted, if it is a roommate dispute the tribunal has jurisdiction to decide this matter. If the respondent is the homeowner, the evidence shows that the applicant and respondent shared a bathroom so again the tribunal has jurisdiction over this matter. Therefore, I find that the dispute is within the tribunal's small claims jurisdiction.

## **ISSUE**

8. The issue in this dispute is whether the respondent unreasonably evicted the applicant, and if so, whether the applicant is entitled to a \$750.00 refund for paid rent.

## **EVIDENCE AND ANALYSIS**

9. In a civil dispute such as this, the applicant must prove his claim. He bears the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
11. There is no evidence of a written rental agreement between the parties. However, it is undisputed that the applicant began renting from the respondent on February 4, 2019 and paid \$750.00 rent for the month of February.
12. The applicant says that on February 7, 2019 the respondent kicked him out for having a bath too late at night on February 6, 2019. He states that on that night the

respondent and another unnamed party came home late and they were drunk. The applicant says that they were making “aggressive sounding motions” outside the bathroom, but otherwise said nothing about his having a bath at that time.

13. The applicant says that the next morning, on February 7, 2019, the respondent moved some of his things without asking him. The evidence suggests that the applicant was looking for a place to put his work tools. He asked the respondent where a good spot was to put his things and that she “freaked out” about how he had a bath too late at night and told him that he had to get out immediately. He said that the respondent never told him what the cut-off time for taking a bath was.
14. The respondent says that at noon on February 7, 2017 she spoke to the applicant in the hallway and politely asked him not to have a bath at 1 a.m. She says his response was “explosive” and he said that she was not even there when he had a bath. She says he also made complaints about the people who lived downstairs and then “blasted out the door.”
15. The respondent says she did not kick the applicant out. Both parties provided text messages showing that the applicant claims he was kicked out and the respondent repeats that she did not kick him out. In one text message later in the day on February 7, 2019 the applicant indicates that the respondent putting his soap on the counter with his other stuff meant that she kicked him out. He also says in the text that the respondent told him to leave.
16. I am unclear as to why the applicant would be suggesting that the soap on the counter proves that the respondent meant to make him leave if he is claiming that she clearly told him in words that he had to get out. The applicant later said in a text that he would not stay after being told to leave and accused the respondent of telling him that he was her problem. The respondent texted back that she requested the applicant not have a bath after one in the morning and that he was the one who “went berserk.”

17. The applicant also says that the respondent made the housing situation unlivable due to the level of aggression displayed towards him and that he no longer felt safe living there. He says that the respondent's actions were so aggressive that he had to call the police because he feared for his personal safety. He does not provide detailed evidence as to what made him fearful, except for alleging that the applicant pointed her finger in his face. The applicant has included a screenshot of his phone which shows that he called 911 at 12:16 p.m. and 12:36 p.m. on February 7, 2019. There is no explanation for why he would have to call twice.
18. I find that the phone log showing the applicant called the police does not establish that this was because he was afraid of the respondent. Also, there was apparently no follow-up by the police. I also note that the text messages never mention that the applicant thought the respondent was in some way going to physically hurt him.
19. I find the applicant has failed to prove that the applicant forced him to leave the rental accommodations, not come back, and then kept the rent money. On February 7, 2019, she told him that he was not kicked out, which I find reasonably meant that he could return. Although the applicant continuously says he was kicked out, I find he has not provided any sufficient evidence that this was the case. In all of the text messages in evidence the respondent never told the applicant he was kicked out or evicted. I also find that the applicant has not proved that he had to leave because he was worried about his personal safety.
20. 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. As the applicant was unsuccessful in his claim I find he is not entitled to have his tribunal fees or expenses reimbursed.

## **ORDER**

21. I dismiss the applicant's claim and this dispute.

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Kathleen Mell, Tribunal Member