Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *McAllister v. Varga,* 2019 BCCRT 1076

B E T W E E N :

DEBORAH MCALLISTER

APPLICANT

A N D :

DEBORAH VARGA

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This is a dispute between ex-roommates about an unreturned damage deposit, rent, a broken pair of glasses, a camera, and hors d'oeuvres picks.

2. The applicant, Deborah McAllister, says that the respondent, Deborah Varga, should return her $250 damage deposit. The applicant also seeks the return of

$216.33 in paid rent, as she says she was forced out her accommodations early. The applicant also claims $750 to replace her glasses, which she says were broken by the respondent's work supervisor. Finally, the applicant asks for the return of a camera and hors d'oeuvres toothpicks.

3. The respondent disagrees with all the applicant's claims.

4. The parties are self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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. Here, 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 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.

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. 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* (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.

10. I note that the applicant originally began a proceeding in the BC Provincial Court regarding this dispute. The applicant obtained a default judgment which was later overturned by a Provincial Court judge. The judge stayed the proceeding and advised the applicant to have her dispute heard before the tribunal. I therefore find I have jurisdiction to hear this issue and find it appropriate to proceed to consider this dispute on the merits.

ISSUES

11. There are four issues in this dispute.

    a. Does the respondent have to return the $250 deposit?

    b. Does the respondent have to return $216.33 for paid rent?

    c. Does the respondent have to pay $750 to replace the applicant's glasses?

    d. Does the respondent have to return a camera and 9 hors d'oeuvres picks?

EVIDENCE AND ANALYSIS

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

Issue #1. Does the respondent have to return the $250 deposit?

13. The applicant moved in with the respondent in December 2017. They were roommates, and the respondent was the primary tenant under a residential tenancy agreement. The applicant provided a $250 deposit. A November 30, 2017 receipt notes it was a "damage deposit" and both the parties characterized it as such in their submissions.

14. As noted, the RTA does not apply. The parties also did not write down the terms of their agreement and proceeded informally. But, based on the above I find the parties' agreement was that the $250 was a damage or security deposit, to be returned if the respondent caused no property damage.

15. The respondent says the primary reason for not returning the deposit is that the applicant brought the fleas into the house. She says this caused her various expenses far in excess of the deposit. No other damage is alleged.

16. For the reasons that follow, I find that the applicant is entitled to the return of the $250 deposit.

17. The parties each own a dog. On September 8, 2018, the respondent discovered fleas on her dog. She sent a text message that afternoon and blamed the applicant for bringing fleas into the house through her dog. I find that there were indeed fleas in the house, as demonstrated by the various photos of insect bites on the respondent's body.

18. When the applicant returned she saw that the respondent had torn out various rugs and some of her own items onto the law. The respondent also moved a number of

the applicant's belongings to the applicant's room, to contain the infestation. The parties' relationship was contentious and ultimately, the respondent moved out on September 13, 2018.

19. I find it unlikely that the applicant was responsible for bringing fleas into the house. I base this primarily on a December 11, 2018 letter from a veterinarian. The veterinarian states that on September 4, 2018, he examined the applicant's dog and found that it was "free of ectoparasites", which I infer to include fleas. The respondent questioned the veterinarian's qualifications but the evidence before me shows he is properly accredited. Further, the respondent acknowledges that the applicant's dog is "practically hairless" and adult fleas would be obvious to the naked eye. I find these facts support the conclusion that the applicant's dog was unlikely to harbor fleas.

20. The respondent says it was unlikely her dog contracted fleas from some other source because it was "properly protected", whereas the applicant's dog was not. However, the respondent provided no details. Further, regardless of what medication the applicant used, the veterinarian observed that the applicant's dog had no fleas only a few days before fleas were discovered on the respondent's dog. I therefore find I am unable to conclude the applicant's dog caused the fleas to be found on the respondent's dog.

21. The respondent also notes her dog has thick fur that made detecting fleas more difficult. I find this supports the conclusion that the respondent's dog would be more likely to bring fleas into the house undetected.

22. The respondent alleges that in April 2018 the applicant agreed to pay for an exterminator if fleas were ever discovered in the house. I find there is insufficient evidence of such an agreement. It was not written. The respondent provided letters from witnesses to corroborate the existence of such an agreement, but it is clear none of them were present when the agreement was allegedly made.

23. The applicant says she instead agreed to pay for half the cost of an exterminator, subject to the choice of pesticides used (which was never resolved). The applicant says this tentative agreement was discussed on September 9, 2018, rather than April 2018. Based on all the evidence and submissions, I find it unlikely that the applicant agreed to pay for an exterminator regardless of whether she was responsible for a flea infestation.

24. Given my findings that the applicant did not cause the flea infestation and caused no other damage, I find the respondent is not entitled to keep the $250 damage deposit.

25. I note that the respondent says the parties agreed to split their BC Hydro Bill, and that the applicant still owes her $64.13. The respondent supported this amount with a BC Hydro invoice. The applicant acknowledges that she still owes an as-yet determined amount for her share of this bill.

26. This dispute has a long history that includes discontinued proceedings in the BC Provincial Court. Given this, and applicant's acknowledgement that she still owes the respondent for utilities, I find it appropriate to order a set-off of $64.13 from the applicant's claim.

27. In summary, the applicant is entitled to payment of $185.87 (being the deposit amount of $250, less a set off of $64.13), plus pre-judgment interest under the *Court Order Interest Act* (COIA), calculated from September 13, 2018. I find that date appropriate as the applicant moved out at the time.

Issue #2. Does the respondent have to return $216.33 for paid rent?

28. It is undisputed that the applicant paid $590 as rent for the month of September 2018 and moved out on September 13, 2018. As she moved out before the end of the month, the applicant sought the return of $334.00 in her Dispute Notice. She submitted this was equivalent to 17 days' worth of rent. However, in her arguments, the applicant acknowledges that the respondent did let her move in 6 days early at

the start of the tenancy. She now seeks the return of only 11 days' worth of rent, which I calculate to be $216.33.

29. The parties dispute whether the applicant departed voluntarily or was forced to move out. The evidence shows that the parties' relationship deteriorated rapidly after September 8, 2018. On September 9, 2018 the respondent wished to use an exterminator that would fumigate the house. The applicant disagreed with this course of action and said she would leave at the end of the month. On September 10, 2018 the respondent sprayed the applicant's dog with a flea treatment over the applicant's objections. The applicant also objected to the respondent smoking due to a health condition. To her credit, the respondent expressed some regret about doing this. Later that night, the applicant called the police, but the incident did not result in any arrests or charges.

30. The applicant called the police again on September 11, 2018, after discovering $200 was missing from her room. She notes she had a "moment of hysteria" and expressed embarrassment over the incident.

31. The applicant's submissions make it clear that by September 9, 2018, she had resolved to move out early, though she had the option of staying for the rest of the month. It is also clear from the parties' submissions that they were both unwilling to compromise on how to treat the flea infestation. The applicant submits she was "terrorized" into moving, but the submissions and evidence show a distinct lack of timidity on her part. I find that neither party was wholly responsible for the breakdown in their relationship. Both parties expressed regret over some of their actions.

32. In order to prove her claim the applicant must show that the respondent breached their agreement. However, I have found that the applicant decided to leave early. There is no indication that the respondent agreed that in such a situation, the applicant would be entitled to a return of return of rent, prorated to reflect the number of days remaining in the month. The applicant has not shown that the respondent breached any term of the parties' agreement.

33. I dismiss this claim.

Issue #3. Does the respondent have to pay $750 to replace the applicant's glasses?

34. The applicant claims for the replacement cost of eyeglasses that were damaged on October 19, 2019.

35. In her April 16, 2019 affidavit the applicant explains that she visited the respondent's workplace in order to serve her with a Notice of Claim in a BC Provincial Court proceeding. I note that proceeding has since been discontinued. The applicant says that the respondent's supervisor threw a package of mail at her that knocked off her eyeglasses, breaking them. The supervisor is not a party to this dispute.

36. I find the applicant has not met her burden of proof. There is no evidence before me that the supervisor was acting under the respondent's direction. She did not explain why the respondent would be responsible for the actions of her supervisor. She is also not a party to this dispute and had no opportunity to provide submissions or evidence. Given these circumstances, I find it unnecessary to make any finding as to whether the supervisor broken the applicant's glasses.

37. I dismiss this claim.

Issue #4. Does the respondent have to return a camera and 9 hors d'oeuvres picks?

38. It is undisputed that the applicant asked the respondent to keep and sell her father's camera and 9 bone hors d'oeuvres picks. She says she wishes them returned.

39. I find that the applicant is not entitled to the return of these items. The applicant gave the respondent a number of items to sell. When they did not sell for the price the applicant wanted, the applicant gave them to the respondent for disposal. The applicant did not disagree with this version of events.

40. As noted in *Bergen v. Bergen*, 2013 BCCA 492, at common law a key component of gifts is the transferor's intent. Once a true gift has been made, the gift cannot be revoked (paragraph 41). I find that the applicant gifted the camera and hors d'oeuvres picks.

41. I dismiss this claim.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

42. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.

43. While the applicant was partially successful in one of her claims, I find that overall the parties had divided success. I conclude that each party must bear its own tribunal fees or dispute-related expenses.

44. The applicant seeks costs incurred in the BC Provincial Court in a related proceeding. I decline to order any such costs. Section 19 of the *Small Claims Act* shows that the BC Provincial Court is the most appropriate venue for the determination of costs in its own proceedings.

ORDER

45. I order the respondent to pay the applicant a total of $189.21, broken down as follows:

    a. 185.87 in debt, and

    b. $3.34 in pre-judgment interest under the COIA, calculated from September 13, 2018.

46. The applicant is entitled to post-judgment interest under the COIA. The applicant's remaining claims are dismissed.

47. 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.

48. 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.

David Jiang, Tribunal Member