



Civil Resolution Tribunal

Date Issued: November 15, 2019

File: SC-2019-005203

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vissia v. Reinoso*, 2019 BCCRT 1291

B E T W E E N :

JOCELYN VISSIA

APPLICANT

A N D :

NATALIA REINOSO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute between former roommates. The applicant, Jocelyn Vissia, says that the respondent, Natalia Reinoso, fraudulently collected \$1,200 from her as the last month's rent and asks for an order that the respondent reimburse her that amount. The respondent admits that she collected last month's rent from the applicant, but denies that she owes the applicant any money.

2. The parties are self-represented.

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. 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.
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. Although the *Residential Tenancy Act* (RTA) governs residential tenancies, the Residential Tenancy Branch refuses jurisdiction over roommate disputes. As this is a dispute between roommates, I find that the RTA does not apply to the parties' agreement, and that this claim is within the tribunal's small claims jurisdiction for debt or damages.
7. 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.

ISSUE

8. Initially, the applicant made claims about money paid for deposits for cleaning and utility accounts. She is no longer pursuing these claims.
9. The remaining issue in this dispute is whether the respondent must reimburse the applicant the \$1,200 paid in last month's rent.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The applicant provided evidence and both parties provided submissions in support of their respective positions. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
11. In September of 2018, the respondent signed an agreement with a landlord and another person, NK, to rent an apartment between October 1, 2018 and September 30, 2019. After NK moved out, the landlord and the applicant signed an addendum to replace NK with the applicant for the remainder of the term.
12. In addition to the written tenancy agreement with the landlord, the applicant and the respondent had a verbal agreement about other aspects of their roommate relationship. As the respondent would be out of town for work for a period of several months, the parties decided that the applicant would pay \$1,200 per month for rent during that time instead of the usual \$925. The applicant also says she paid the respondent \$1,200 for the last month's rent on the understanding that the respondent had paid that sum to the landlord already.
13. The applicant moved into the home in early May of 2019 and the respondent left town for work shortly afterwards. When discussing rent with the landlord, the applicant learned that the landlord did not require the payment of the last month's

rent. The applicant felt that the respondent had deceived her, and asked the respondent to return the \$1,200. The respondent declined.

14. In the hopes of motivating the respondent to return her money, the applicant decided to pay only the \$925 per month required by the rental agreement rather than the \$1,200 she had agreed to pay during the respondent's absence. The respondent and one of her family members contacted the applicant to discuss the situation, but they did not resolve it.
15. In early July 2019, the respondent left her out-of-town employment and returned to the home. The applicant left the home at some point in July, and says she had an agreement with the landlord to end her tenancy early.
16. The applicant says that the respondent collected the \$1,200 last month's rent from her "illegally" as this is not permitted in this province. She also says that the respondent took advantage of her lack of knowledge, and induced her to enter into their verbal agreement by engaging in fraud and misrepresentation. The applicant's position is that her verbal agreement with the respondent is not enforceable due to fraud. The applicant asks for an order that the respondent return the \$1,200 to her.
17. The respondent admits that she collected \$925 as last month's rent from the applicant, and explains that she did so as she had had a previous experience where a roommate left without paying their outstanding rent. She said that she had had the same arrangement with NK, and returned this amount to her at the end of their roommate relationship. The respondent denies that she did anything inappropriate, and says that all payments by the applicant were made as required by their verbal agreement. The respondent says that the applicant did not pay her portion of the August 2019 rent, but did not explain why she did not feel the applicant was not responsible for the September 2019 rent or make a counterclaim to recover any outstanding amounts.
18. The parties disagree as to what portion of the funds the applicant paid to the respondent was for the last month's rent. It is apparent that the applicant gave the

respondent money for various deposits and fees in addition to the last month's rent. In a text message exchange on April 24, 2019, the respondent stated that the applicant needed to pay her "First and Last = 1200 + 950". A later undated exchange of messages said, "you needed to pay \$1200 for the month of May and \$925 for October". Given that the tenancy agreement identified the rent as \$925 per tenant, I find that this was the amount collected as the last month's rent.

19. The parties agree that the RTA applies to their agreement with the landlord, but not to their own verbal agreement. Thus, the parties were free to agree to any terms they wished, regardless of whether those terms would have been permitted in a formal tenancy agreement under the RTA. I do not find that it was inappropriate for the respondent to request the advance payment of the last month's rent from the applicant in these circumstances.
20. In *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at paragraph 21, the Supreme Court of Canada set out the 4 elements of civil fraud, which is also known as fraudulent misrepresentation, as follows:
 - a. a false representation made by the respondent,
 - b. some level of knowledge of the falsehood of the representation on the part of the respondent (whether through knowledge or recklessness),
 - c. the false representation caused the applicant to act, and
 - d. the respondent's actions resulted in a loss.
21. Although there may have been a misunderstanding as to who would be holding the funds, I do not find that the evidence supports the conclusion that the respondent made a false representation about the purpose of the payment as the last month's rent. Further, as there is no indication that the last month's rent would not be returned to the applicant once she met all of her obligations, there would be no loss to the applicant. I do not find that the elements of civil fraud have been established

in this case, and find that the verbal agreement on this matter was binding on both parties.

22. The next consideration is whether the applicant is entitled to the return of all or some of the \$925 she paid the respondent as the last month's rent. The applicant admits that she did not follow the terms of the verbal agreement by not paying the agreed-upon \$1,200 per month in the respondent's absence. It appears that the applicant paid the increased amount for May of 2019 but not for June of 2019. This left a shortfall of \$275 for which I find the applicant is responsible.
23. Further, under the terms of the verbal agreement with the respondent, I find that the applicant was also responsible for rent for the remainder of the tenancy (namely, for the months of July, August and September). The evidence does not establish that the respondent agreed to end or change the verbal agreement. Although the applicant says she and the landlord agreed to end her tenancy early, she did not provide evidence of this agreement. In addition, the applicant did not show that the early termination of the tenancy did not leave the respondent with the responsibility of paying the entire rent amount, which would be higher than the \$925 paid as last month's rent. I find that the applicant has not proven that she has met her obligations under the verbal agreement with the respondent.
24. I acknowledge the applicant's belief that the respondent deceived her and took money to which she was not entitled. However, I have determined that the respondent did not engage in fraudulent misrepresentation, and that the applicant breached her binding agreement with the respondent. I find that the applicant is not entitled to the return of any portion of the \$925 she paid the respondent for the last month's rent. Accordingly, I dismiss the applicant's claim.
25. 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 not successful, I dismiss her claim for reimbursement of tribunal fees.

ORDER

26. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member