



Civil Resolution Tribunal

Date Issued: March 11, 2020

File: SC-2019-008626

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Haughey v. Holigroski*, 2020 BCCRT 281

BETWEEN:

ADRIEN HAUGHEY

APPLICANT

AND:

PEGGY HOLIGROSKI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about the return of rent and a damage deposit.
2. The applicant, Adrien Haughey, says he was living in a home owned by the respondent, Peggy Holigroski, when she unreasonably evicted him in the middle of

the month, which he had already paid rent for. He seeks a total of \$1,133.86: a refund of \$383.86, which he says is the remainder of pro-rated rent for October after he was evicted, \$400 for November's rent which he says he prepaid, and \$350 for the return of his damage deposit. The respondent says that she was justified in evicting the applicant due to his behaviour, that the \$400 was the repayment of a loan she lent him, and that the applicant damaged her property and so is not entitled to the damage deposit's return.

3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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 documentary 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.
6. 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.

7. In resolving this dispute the tribunal may make one or more of the following orders, where permitted by 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.

8. There is some disagreement about whether the parties were roommates, or whether the applicant was the respondent's tenant. The respondent says the applicant lived in her garage, with a toaster and coffee maker, and that he had access to her home's bathroom. Given the parties shared a bathroom and the respondent was the home's owner, I find the tenancy is excluded from the application of the *Residential Tenancy Act* and so it does not fall under the Residential Tenancy Branch's jurisdiction. So, I find the tribunal can hear this dispute under its small claims jurisdiction.

ISSUES

9. The issues in this dispute are:
 - a. Whether the respondent owes the applicant \$383.63 for a refund of the remainder of October's rent,
 - b. Whether the respondent owes the applicant \$400 for a refund of November's pre-paid rent, and
 - c. Whether the applicant is entitled to a return of his \$350 damage deposit.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my

decision. I note the respondent did not submit any evidence, despite being given the opportunity to do so.

11. It is undisputed that in late September 2019, the parties agreed the applicant would move into the respondent's garage starting October 1, 2019. It is also undisputed the applicant paid a \$350 damage deposit and \$700 for October's rent. It does not appear the parties had a written agreement, but these terms were discussed in text messages submitted by the applicant.
12. Within a few weeks, the parties' relationship soured. I find the details are not directly relevant to this dispute, but the respondent says she felt unsafe and asked the applicant to leave. It is undisputed the police were called as a result of the respondent's concerns with the applicant's behaviour on her property, but the police file is not before me. The applicant does not specifically address the respondent's allegations about his behaviour, other than stating "each statement" was either "untrue" or "irrelevant". In any event, the applicant says he moved out on October 17, 2019 with a police escort and therefore seeks the pro-rated portion of the rent he paid for October but was unable to use.
13. On the evidence before me, I find the parties agreed the applicant would pay \$700 per month for partially shared accommodation in the respondent's home and garage. The respondent evicted the applicant part way through the month. Although the applicant says he was unreasonably evicted, I find there is insufficient evidence to support his argument. Faced with conflicting evidence from the parties about the reason for the eviction, it is impossible to know what truly happened. As noted above, the burden is on the applicant to prove on a balance of probabilities that he is entitled to a refund for unused rent. I find he has not met that burden on this issue. Therefore, I dismiss the applicant's claim for a refund of October's remaining rent.
14. As for the \$400, the parties disagree about what that money was for. The applicant says it was pre-payment for part of November's rent. In contrast, the respondent says the \$400 was repayment for money she lent to the applicant. Similarly to the

eviction issue, I find there is an evidentiary tie on this issue. There is no persuasive evidence in support of either party's position. Given the burden is on the applicant, I find he has not proven his entitlement to a refund of the \$400.

15. I turn then to the damage deposit. The parties agree the applicant's \$350 damage deposit was not returned. The applicant says he did not damage any of the respondent's property and therefore is entitled to the deposit's return. The respondent alleges the applicant caused various damage to her home and stole her personal property, which the applicant denies. As noted above, the respondent did not submit any evidence, including any that would support her allegation the applicant caused the specified property damage, such as photographs that I would expect the respondent would readily have and should have submitted if the damage had occurred as she alleges. In the circumstances, I find the weight of the evidence does not support a conclusion the applicant damaged the respondent's property. So, I find there is no basis for the respondent to keep the damage deposit. I find the respondent must refund the applicant \$350.
16. The applicant is also entitled to pre-judgment interest on the \$350 under the *Court Order Interest Act*. Calculated from October 17, 2019, the date the applicant moved out, this amounts to \$2.75.
17. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Here, although there was mixed success between the parties, neither party paid tribunal fees or claimed dispute-related expenses.

ORDERS

18. Within 30 days of the date of this decision, I order the respondent, Peggy Holigroski, to pay the applicant, Adrien Haughey, a total of \$352.75, broken down as follows:
 - a. \$350 in debt, and
 - b. \$2.75 in pre-judgment interest under the *Court Order Interest Act*.

19. The applicant is also entitled to post-judgment interest, as applicable.
20. 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.
21. 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.

Andrea Ritchie, Vice Chair