



Civil Resolution Tribunal

Date Issued: April 7, 2020

File: SC-2019-008607

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Balzer v. Arcand*, 2020 BCCRT 380

BETWEEN:

KAYLA BALZER

APPLICANT

AND:

SKYLAR ARCAND

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a \$500 damage deposit paid for a residential tenancy. The applicant, Kayla Balzer, says the respondent, Skylar Arcand, should return a portion of the deposit. The parties formerly lived together and dispute whether and how much the applicant damaged the respondent's property. The respondent says that none of the deposit should be returned.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

The Residential Tenancy Act

7. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. The *Residential Tenancy Act* (RTA) governs residential tenancies. However, section 4(c) of the RTA says it does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I asked the parties to provide submissions on whether the exception of RTA section 4(c) applied to this dispute.

8. Based on the parties' emails and an agreed statement of facts, it is undisputed that the respondent owns a house and the applicant rented accommodation there. The parties agree they shared all, or nearly all the entire house and yard, including bathroom and kitchen facilities. Their arrangement was verbal. Neither party objected to the tribunal deciding this dispute.
9. RTA section 1 says a landlord includes the owner of a rental unit that permits occupation of a rental unit under a tenancy agreement. RTA section 1 defines tenancy agreements to include verbal agreements.
10. I find that the respondent was the applicant's landlord under the RTA as she owned the rental unit and provided housing under a verbal tenancy agreement. However, as the parties shared both bathroom and kitchen facilities, I find the exception of RTA section 4(c) applies. The RTA does not apply to this dispute and I find the tribunal has jurisdiction over the claim.

ISSUES

11. The issues in this dispute are as follows:
 - a. Did the applicant damage the respondent's property beyond ordinary wear and tear?
 - b. Must the respondent return any of the applicant's damage deposit?

EVIDENCE AND ANALYSIS

9. 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.
12. I will start with the agreed facts. The applicant rented a room in the respondent's house from October 1, 2018 to September 29, 2019. The applicant paid a \$500 damage deposit. I find the parties agreed the respondent could use the deposit to

pay for, among other things, any damage beyond ordinary wear and tear caused by the applicant. Although the parties did not document what the deposit was for, the parties' submission and text messages support this conclusion. The applicant also referred to it specifically as a damage deposit in her tribunal documents.

13. The parties agree that the respondent is entitled to keep the following amounts from the \$500 damage deposit: 1) \$65 to account for other owed expenses, and 2) a fair amount for damaged blinds. I infer the applicant claims \$435, less the price for the blinds, rather than the \$450 stated in her application for dispute resolution.
14. The respondent did not return any of the \$500 deposit. She says she kept it to pay for repairing damage to her house. The parties provided text messages showing they discussed the return of the deposit, but I find the parties did not reach any agreement on the amount.
15. At one point the applicant also texted that the respondent could keep the remaining deposit. In October 2019 the applicant disagreed she damaged the applicant's wall or that she should pay for any steam cleaning. In the same exchange she texted the respondent to keep her money and never talk to her again.
16. As noted in *1050438 B.C. Ltd. v Penguin Enterprises Ltd.*, 2019 BCSC 2138, a party may choose to waive contractual rights, but the intent to do so must be communicated clearly. I do not find this intent communicated clearly here. The applicant's texts at the time contained profanity and showed she was upset. The parties also continued to text about the remaining amount of the deposit. I find this inconsistent with the applicant waiving any right to the remaining deposit amount and the respondent agreeing.
17. I will therefore consider whether the applicant caused damage to the respondent's house beyond ordinary wear and tear. The respondent says the applicant damaged her drywall, blinds, an exterior lamp post, window screen, and sliding door closet. The respondent provided an undated estimate from a contractor, KD, to repair

several of the items, which I will refer to below. The respondent also says she spent \$100 on steam cleaning the applicant's room.

18. For the reasons that follow, I find the applicant has not shown she is entitled to the return of any of the deposit.
19. First, the respondent provided photos of 4 holes in her painted drywall. It is undisputed that the respondent gave the applicant permission to mount her television, and the holes were made by the screws used for this purpose. The respondent says this means the holes were ordinary wear and tear, and that the applicant waived any right to claim for repairs of her drywall. I disagree, given the number of the holes and their size. A tape measure in the photos show the largest hole is approximately 1 centimeter in diameter. There are also no emails or text messages showing the respondent could leave the holes unrepaired after she removed her television.
20. KD estimated \$200 to repair the drywall and repaint it. He also estimated \$50 for supplies, which are divided with another unrelated task. On a judgment basis, I find that half of the supplies are attributable to repairing the holes and conclude the respondent is entitled to keep \$225 to repair the drywall holes.
21. Second, as noted above, the applicant acknowledges she broke the respondent's blinds and agrees the respondent is entitled to fair replacement costs. The respondent provided a November 15, 2019 invoice and receipt for \$98.87 for new blinds. The applicant says the selected blinds are unreasonably expensive, but she did not provide any comparison prices. I find the respondent is entitled to the full \$98.87 amount.
22. Third, the parties agree the applicant damaged the respondent's exterior lamp post by driving into it. However, the applicant says the respondent suffered no loss. She points out the text messages show that the respondent intended to replace them at some point. The applicant also says the lamp post did not light up even before she hit it.

23. I find that the respondent is entitled to some compensation for the damaged lamp post. The damage resulted from a collision, which I find goes beyond ordinary wear and tear. The respondent provided an excerpt from her home inspection report showing the lamp post did not turn on due wiring issues rather than any issue with the lamp post itself. I find that the applicant caused damage that would normally be compensable through the damage deposit. I disagree the respondent suffered no loss as she had to remove her lamp post prematurely and her lamp post no longer has any resale value. The respondent provided an ad showing the lamp post retails for \$179.99. On a judgment basis, I find that the respondent is entitled to \$45, being 25% of this amount. I estimate this as the value of the used lamp post before it was damaged.
24. The parties disagree on whether the applicant damaged a window screen and sliding closet door in the applicant's room. The respondent provided photos showing the window screen was bent and the closet door was missing a component that kept it on its tracks. The applicant says these items were damaged either before she moved in or after she moved out. However, I find it more likely that the applicant caused the damage, given that she lived in that room for approximately a year. There is also no documentation showing she raised these as preexisting issues before the parties fell into conflict. I also find these issues were not the result of ordinary wear and tear as the window screen shows damage (the metal frame appears bent and scratched or discoloured from an impact) and the closet is missing a component.
25. The respondent provided a December 17, 2019 invoice and receipt for \$77.42 for a new window screen. KD also estimated \$67.50 as labour to replace the screen and \$67.50 as labour to repair or replace the closet door. I find the respondent is entitled to retain these amounts. This equals \$212.42.
26. The respondent also says she paid \$100 to steam clean carpets in the applicant's room. I do not find the respondent was entitled to charge the applicant for this

amount. The respondent did not provide any receipts and although she provided pictures of the carpet, I am not persuaded their condition required steam cleaning.

27. In summary, I find the respondent has shown the applicant caused damage beyond ordinary wear and tear to the following items: her drywall (\$225), the blinds (\$98.87), the damaged lamp post (\$45), the window screen (\$144.92) and the sliding closet door repairs (\$67.50). This equals \$581.29, which is more than the deposit amount of \$500. I therefore find the applicant has not proven her claim for the return of any of the deposit amount.
28. 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. The respondent is the successful party and claims no tribunal fees or dispute-related expenses. I therefore do not order any.

ORDER

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

David Jiang, Tribunal Member