



# Civil Resolution Tribunal

Date Issued: April 7, 2020

File: SC-2019-008083

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grandel v. Robinson*, 2020 BCCRT 384

BETWEEN:

MEGAN GRANDEL

**APPLICANT**

AND:

Jill Robinson

**RESPONDENT**

AND:

MEGAN GRANDEL

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## **INTRODUCTION**

1. This dispute is about shared accommodation. The applicant and respondent by counterclaim, Megan Grandel, says that her landlord, the respondent and applicant by counterclaim, Jill Robinson, breached their rental agreement such that Ms. Grandel was improperly evicted from the home after only 5 days. Ms. Grandel seeks \$858.33, which she says is for her paid damage deposit and return of pro-rated rent for the rest of the month after she was kicked out.
2. In contrast, Ms. Robinson says it was Ms. Grandel who tried to change the parties' agreement and then left the home without giving the required 30 days' notice. In her counterclaim, Ms. Robinson seeks \$850 for lost rental income for the following month.
3. The parties are each 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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. Generally, the tribunal does not have jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the director of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTA does not apply to disputes where a tenant shares a kitchen or bathroom with the owner. In a September 4, 2019 decision, the RTB declined to take jurisdiction over this dispute as it determined Ms. Robinson shared the same kitchen and bathroom with Ms. Grandel and another tenant. Therefore, I find this dispute falls within the tribunal's small claims jurisdiction set out in section 118 of the CRTA.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether Ms. Grandel is entitled to \$858.33 for the return of her damage deposit and pro-rated rent for May 2019, and
  - b. Whether Ms. Robinson is entitled to \$850 for lost rental income for June 2019.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Ms. Grandel must prove her claim on a balance of probabilities. In her counterclaim, Ms. Robinson bears this same burden. 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.
11. It is undisputed that at some point before May 1, 2019, the parties agreed Ms. Grandel and another tenant, LR, would move into a 3-bedroom townhome owned by Ms. Robinson. It is undisputed Ms. Robinson lived elsewhere at the time. It was agreed Ms. Grandel and LR would each pay \$850 per month in rent, and a \$425 security deposit each. Ms. Robinson sent Ms. Grandel a rental agreement to sign on May 1, 2019, after Ms. Grandel and LR moved into the home. It is undisputed that Ms. Grandel never signed this agreement. While Ms. Robinson rented the rooms to Ms. Grandel and LR at the same time, the evidence shows Ms. Robinson's agreement was only with Ms. Grandel. I infer Ms. Robinson had a separate agreement with LR, who is not a party to this dispute.
12. On May 1, 2019, Ms. Grandel e-transferred \$1,000 to Ms. Robinson, noting she would transfer the additional \$275 another day as \$1,000 was her e-transfer daily limit. There is no indication the remaining \$275 was ever paid.
13. Later on May 1, 2019, Ms. Grandel and LR moved into Ms. Robinson's home, while Ms. Robinson was out of town. After noting there were some belongings in the master bedroom, Ms. Grandel messaged Ms. Robinson as it was unclear what

bedrooms were available. Ms. Robinson advised the master bedroom and garage were not part of the rental agreement, but that the rest of the house was included.

14. Ms. Grandel says she was unaware that Ms. Robinson was keeping a portion of the home for her own use. She says it was her understanding she and LR would be the only occupants, and therefore says Ms. Robinson breached the parties' agreement. In contrast, Ms. Robinson says it had always been the case that only the two non-master bedrooms were advertised for rent, as well as a bathroom and the communal kitchen and living space, and not the whole home. However, neither party produced copies of the rental advertisement.
15. In any event, due to the disagreement about bedroom availability, the parties became heated. On May 4, 2019, Ms. Robinson texted Ms. Grandel and told her to move her belongings "out of there asap" and later, "[i]f the situation isn't suitable for you, you can consider this your one month notice to end the tenancy". Later that day, Ms. Robinson attended at the property and was recorded as telling Ms. Grandel and LR to vacate the property and she would pay them the pro-rated amount for the rest of the month "tomorrow". On May 5, 2019, Ms. Grandel and LR vacated the property, and requested an \$858.33 refund, each, for return of the damage deposit (\$150) and pro-rated rent for the rest of May (\$708.33).
16. The parties do not dispute that there was a verbal/text rental agreement between them for \$850 monthly rent. However, in addition to the existence of an agreement, there must be what is known in law as a "meeting of the minds" about the agreement's subject matter, in this case, the subject property being rented.
17. Here, I find the evidence before me shows there was no "meeting of the minds" between Ms. Grandel and Ms. Robinson. As noted above, there is no evidence as to how the property was advertised for rent, whether it was just for the two non-master bedrooms and communal living space, or whether it was for the entire home. I find there was no certainty between the parties as to what aspects of the property the rental agreement covered. I find this is consistent with a message sent by Ms. Robinson in early May after Ms. Grandel moved in, which stated "I guess this was

something we should have discussed beforehand”. Based on the above, I find there was no meeting of the minds, and therefore I am unable to find the parties properly formed a contract about the home rental.

18. I turn then to Ms. Grandel’s claim for an \$858.33 refund. First, for the \$150 damage deposit, Ms. Grandel says it has not been returned, but that the property was left in the same condition it was when she arrived, and therefore Ms. Robinson has no basis to keep the \$150. I note Ms. Robinson does not indicate any damage was caused by Ms. Grandel during her stay. I find there is no evidence showing any damage to the property, and therefore I find Ms. Grandel is entitled to the return of her \$150 damage deposit.
19. Second, for the \$708.33 in pro-rated rent, I find Ms. Grandel is entitled to a return of this amount. I say this because I find Ms. Grandel immediately vacated the property at Ms. Robinson’s request. Although Ms. Robinson at one point said Ms. Grandel would have to leave at the end of the month, I find the situation had escalated to the point where Ms. Robinson demanded Ms. Grandel leave immediately, and I find it was reasonable for Ms. Grandel to leave. Additionally, despite Ms. Robinson now saying Ms. Grandel suddenly demanded the rent refund, I find it was Ms. Robinson who initially proposed the refund, if Ms. Grandel vacated the property promptly.
20. What about Ms. Robinson’s counterclaim for \$850 in lost rental income? Ms. Robinson says that due to Ms. Grandel and LR’s sudden departure and failure to provide 30 days’ notice, she was unable to re-rent the two rooms until July 1 and September 1, 2019, respectively. Although she says she is out a total of 4 months’ rent for the two empty rooms, Ms. Robinson only seeks \$850, for June’s lost rental income for one of the bedrooms.
21. In support of her claim, Ms. Robinson relies on the unsigned rental agreement which requires 30 days’ notice to end the tenancy. I find this unsigned agreement did not govern the parties’ agreement as it was not received until after Ms. Grandel moved in and there is no indication there was agreement between the parties about the contained terms. Further, as noted above, I find there was no legal contract

between the parties because there was no meeting of the minds about the rental property. As a result, I find Ms. Robinson has not proven she is entitled to any lost rental income because the 30 days' notice term is not part of any enforceable agreement. Additionally, as Ms. Robinson requested Ms. Grandel leave "asap", or in any event by the end of May, I find she is not entitled to lost rental income for June.

22. In summary, I find Ms. Grandel is entitled to a refund of \$858.33. I dismiss Ms. Robinson's counterclaim. Ms. Grandel is entitled to pre-judgment interest on the \$858.33 under the *Court Order Interest Act*. Calculated from May 5, 2019, the date she vacated the property, this amounts to \$15.55.
23. 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. I see no reason to deviate from that general rule. As Ms. Grandel was successful, I find she is entitled to reimbursement of \$125 in paid tribunal fees. As Ms. Robinson was not successful in her counterclaim, I dismiss her claim for tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this decision, I order the respondent and applicant by counterclaim, Jill Robinson, to pay the applicant and respondent by counterclaim, Megan Grandel, a total of \$998.88, broken down as follows:
  - a. \$858.33 in debt for a refund of rent and a damage deposit,
  - b. \$15.55 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in tribunal fees.
25. Ms. Grandel is also entitled to post-judgment interest, as applicable.
26. Ms. Robinson's counterclaim is dismissed.

27. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
28. 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.

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Andrea Ritchie, Vice Chair