



Civil Resolution Tribunal

Date Issued: May 4, 2020

File: SC-2019-010741

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Donnellan v. Valliant*, 2020 BCCRT 489

BETWEEN:

DEIRDRE DONNELLAN

APPLICANT

AND:

DAVID VALLIANT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This is a dispute between roommates. The applicant, Deidre Donnellan, subleased a bedroom with shared premises from the respondent, David Valliant. The applicant seeks \$351.15 as the balance of the deposit she gave the respondent when she moved in.

2. The respondent says the applicant forfeited the deposit because she did not comply with the deposit refund requirements. The respondent says the applicant owes him \$1,174.56 because the applicant did not give proper notice before ending the tenancy, overstayed by 1 day, owed money for her share of the utility bills for 2 months, did not clean up when she left, caused damage in the house, and he had to replace a lock on a door. However, the respondent did not file a counterclaim.
3. The 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. 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.
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. 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.

8. 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* 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.

ISSUE

9. The issue in this dispute is whether the respondent is required to reimburse the deposit paid under the parties' roommate agreement.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove her claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. The respondent was a tenant in a 4 bedroom house, and he subleased the other 3 bedrooms to sub-tenants. On June 18, 2018 the respondent agreed to rent a bedroom to the applicant on a monthly basis starting on July 1, 2018. At the time the respondent had 1 other roommate, MH. The kitchen, living room, and bathroom were common areas and shared by all roommates.
13. The parties did not sign an agreement, but the respondent texted "house guidelines" to the applicant on June 17, 2018. I find the guidelines formed a binding agreement between the parties since the applicant stated that she accepted the guidelines and e-transferred a \$425 deposit to the respondent. The relevant terms in the guidelines were:

- a. The rent was \$850 per month due on or before the first of the month plus 1/3 of the utilities (internet, gas, hydro) due within 30 days.
 - b. The applicant must pay a “general deposit” of \$425 which would be refunded after the applicant moved out, provided the utility bills were paid, keys returned, areas cleaned, and after completing an inspection.
 - c. To end the tenancy, the applicant had to give 30 days’ written notice on or before the first day of the month or the notice would be effective the first day of the following month. Also, the notice had to be received at least 1 month before the effective date of the notice and before the day that rent was due.
 - d. The respondent would provide the applicant 30 days’ notice to end the tenancy, unless rent was overdue. The guidelines did not state how much notice would be given if the rent was overdue.
 - e. The parties had to communicate about house business by email.
14. The applicant lived in the house from July 1, 2018 until December 1, 2019. The applicant requested a refund of her deposit when she moved out. Based on the respondent’s evidence, it appears that he e-transferred \$100.44 to the applicant on December 5, 2019. However, neither party explained what this amount was for and I do not have any evidence that it was related to the tenancy or for some other reimbursement between the parties. For this reason, I find it is not relevant for the purposes of deciding this dispute.
15. Although the applicant initially sought \$900 for double recovery of the deposit in the Dispute Notice, she now seeks only \$351.15 in damages. The applicant did not explain how she calculated this reduced amount. I infer she deducted \$73.85 for her share of the utilities for November 2019.
16. The respondent says the applicant is not entitled to a deposit refund because:
- a. She did not return the back door key.
 - b. She did not give proper notice to end the tenancy.

- c. She moved out on December 1, 2019 instead of November 30, 2019.
- d. She caused damage to the property.
- e. She did not clean up as required under the guidelines.
- f. She did not pay her share of the utility bills for July 2018 and November 2019.

17. I will address each of these in turn.

Did the applicant return the keys?

18. The respondent says he provided the applicant with 2 keys when she moved in, one each for the front door and the back door. The respondent says that while he initially left both keys on the dresser in the applicant's room, MH gave the applicant the front door key. MH provided a written statement dated March 7, 2020 that he remembered providing the applicant with a front door key only in June or early July, 2018. MH did not state how he obtained the key.
19. The respondent says that although the applicant returned 2 keys when she moved out, the back door key did not work and he had to replace the lock. The respondent did not explain whether the back door key he gave the applicant no longer worked, or whether the applicant did not return the key he gave her. The respondent says he is owed \$190.48 for the cost of replacing the lock on the back door.
20. Although the applicant referred to a basement door in her submissions, I infer she meant the back door and I will refer to it as such. The applicant says one of the roommates gave her 2 keys for the front door from when she moved in. I infer from the evidence that the applicant was referring to MH. The applicant denies she received a back door key. However, the applicant also says the back door key never worked. I infer this was submitted in the alternative, that is, if one of the 2 keys the applicant received was for the back door, it didn't work.
21. Regardless of how the applicant got the keys, the fact remained that she returned 2 keys to the respondent when she moved out. Once the applicant proved that she

returned the keys to the respondent as required in the guidelines, the burden was then on the respondent to prove the applicant did not return the back door key. I find the respondent did not provide any evidence that the keys the applicant returned were not the ones he or MH gave her. As a result, I find the applicant returned the back door key that the respondent gave her. I find the respondent cannot deduct anything from the deposit for the cost of replacing the lock.

Did the applicant give sufficient notice to end the tenancy?

22. The respondent says the applicant did not provide 30 days written notice that she was ending the tenancy as required under the guidelines. The applicant sent the respondent an email dated October 23, 2019 that she was moving out either December 1, 2019 or January 1, 2020.
23. As stated above, the guidelines required the applicant to give 30 days' written notice on or before the first day of the month or the notice would be effective the first day of the following month. The guidelines also stated that the notice had to be received at least 1 month before the effective date of the notice and before the day rent was due. Since the applicant moved out on December 1, 2019, I find she would have had to give written notice to the respondent before November 1, 2019. Since the applicant sent an email to the respondent on October 23, 2019, I find the applicant met the notice requirements under the guidelines.

Does the applicant owe rent for December 2019?

24. The respondent says the applicant owes \$850 for rent for December 2019 since she moved out on December 1, 2019. The guidelines stated that the notice could be effective the first day of the month following when notice was given. I find this means that a tenancy could end on the first day of the month. I also find the guidelines do not state the tenant must pay for the entire month if she moved out on the first day of the month.
25. I find the respondent accepted the applicant's tenancy was ending on December 1, 2019 and she would move out that day. The respondent did not notify the applicant

that either she must move out on November 30, 2019, or that she had to pay rent for December 2019 if she moved out on December 1, 2019. I find the respondent cannot charge the applicant for rent for December 2019.

Did the applicant damage the respondent's house or fail to clean up?

26. As mentioned above, one of the terms in the guidelines for a refund of the deposit was that the parties had to complete an inspection and the "areas" had to be cleaned. The guidelines did not describe what the inspection consisted of. It also did not describe what areas had to be cleaned.
27. The respondent says the parties only conducted a partial walkthrough inspection when the applicant moved out on December 1, 2019. However, the respondent did not state what part of the inspection was not completed. Since the guidelines did not describe what the inspection consisted of, I find the respondent has not proved that an inspection was not completed.
28. The respondent also says the applicant caused "significant damage" to the house during her tenancy including damage to the stove elements, the kitchen counter top, and "misoperation" of laundry equipment. The respondent also says the applicant did not clean her room upon move out or pick up cigarette butts she discarded on the front lawn.
29. I find the burden is on the respondent to prove that the applicant caused damage and did not clean up since he made the accusation. The respondent provided 2 photographs. The first was of a circular stain on a wooden board that the respondent says was caused by the applicant's coffee maker. The second was of a 16 mm hole in a wall that appeared to be filled with putty or drywall compound. The respondent did not provide photos of the applicant's room or cigarette butts on the front lawn. I find the photos provided by the respondent were not sufficient to prove his allegations. As a result I find the respondent failed to meet this burden.

Did the applicant pay her share of the utility bills?

30. The respondent provided calculations for the applicant's share of the utility bills for July 2018 and November 2019 and says the applicant owed \$134.08 for those 2 months.
31. The applicant says she paid her share of the utility bills for July 2018. While the applicant provided copies of e-transfers she made to the respondent, many of them did not contain the full date. Since the applicant failed to prove she paid the July 2018 utility bills, I find that amount is still owed to the respondent. The applicant agrees that she has not paid her share of the utility bills for November 2019.
32. I have reviewed the utility bills provided by the parties and I am satisfied that the respondent's calculations for the applicant's share of the July 2018 and November 2019 utility bills are reasonable. I find the guidelines permit the respondent to set off \$134.08 for utility bills from the \$425 deposit. As a result, I order that \$134.08 be deducted from the deposit.
33. I find the respondent must pay the applicant \$290.92. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the amount of \$290.92 from December 1, 2019, which is the date the applicant was entitled to the refund, to the date of this decision. This equals \$2.42.
34. 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. In this case the applicant was only partially successful. As a result, I find the applicant is entitled to reimbursement of 70% of the tribunal fees which is \$87.50.

ORDERS

35. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$380.84, broken down as follows:
 - a. \$290.92 in debt as reimbursement for the deposit,

- b. \$2.42 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 for tribunal fees.
36. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claims are dismissed.
37. 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.
38. 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.
39. 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.

Rama Sood, Tribunal Member