Civil Resolution Tribunal

Date Issued: May 22, 2020

File: SC-2019-009467

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nelson v. O'Callaghan*, 2020 BCCRT 563

B E T W E E N :

DANIELLE NELSON

APPLICANT

A N D :

LIAM O'CALLAGHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kathleen Mell

INTRODUCTION

1. This dispute is about whether the respondent, Liam O'Callaghan, owes the applicant Danielle Nelson, money for a $662.50 security deposit and a $1325.00 pet deposit the applicant paid for an accommodation they shared. The applicant

requests $1,987.50 as reimbursement for the amount she paid toward these deposits. The applicant represents herself.

2. The respondent says that the landlord holds the damage deposits until the end of the tenancy agreement. He says he is not responsible for returning them to the applicant until the landlord releases them. The respondent represents himself.

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. In some respects, this dispute amounts to a "she said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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.

7. In his Dispute Response the respondent says that the applicant owes him money for assorted things, including breaking a lease, damaging his property, and for bills. However, the respondent did not file a counterclaim against the applicant. Therefore, I will not consider these issues in the course of this decision.

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 must reimburse the applicant $1,987.50 she paid toward tenancy deposits.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant must prove her claim on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

11. It is undisputed that the parties moved in together in June 2019. The residential tenancy agreement was only between the respondent and the landlord. It was for a fixed term ending on May 31, 2020. The agreement noted that a $1,325.00 security deposit and a $1,325.00 pet damage deposit was required. The applicant paid half

of the $1,325.00 security deposit, or $662.50. She paid the entire $1,325.00 pet damage deposit because the dog belonged to her. The applicant made this payment to the respondent who paid it to the landlord. The tenancy agreement said that the landlord and the respondent tenant had to inspect the rental unit together at the end of the tenancy. The landlord had to repay the security and pet damage deposit unless the landlord claimed unpaid rent or damage.

12. As noted, the applicant did not sign the tenancy agreement although she was present when it was signed and filled out the tenancy form required by the strata. The evidence shows that the applicant did not sign the tenancy agreement because she was not committing to renting the unit for the whole year. The respondent drafted a rental agreement he wanted the applicant to sign dealing with the agreement between the two of them. The rental agreement indicated that it was for 6 months and then on a monthly basis. Part of the agreement stated that the landlord and the strata would reimburse the pet deposit when their "standards were met" when the tenancy agreement ended.

13. It is undisputed that the applicant did not sign this agreement. The evidence shows this was because it stated that the applicant must pay the rent to the respondent on the 25th of each month and she wanted to pay the rent in two installments on the last and first day of each month because of her internet banking limit. I accept that the applicant did not sign the agreement. However, it did put the applicant on notice that the respondent was not promising to return the security or pet damage deposit when she left the rental unit. I find that the applicant did not sign the agreement for other reasons and not because she was claiming at that point that she should get her deposits back once she moved out of the rental unit.

14. Therefore, there was no signed agreement between the parties about what would happen when the applicant moved out before the end of the tenancy agreement the respondent had with the landlord. Therefore, any agreement between the parties was verbal. I note that while verbal agreements are still enforceable, they are typically much harder to prove than written agreements. However, as the evidence

summarized below shows, the applicant has not provided evidence showing that the respondent made a verbal agreement about the return of the deposits.

15. I note that usually deposits are non-refundable. However, the tenancy agreement between the respondent and the landlord made them refundable so long as there was no damage after the inspection at the end of the tenancy. The question is whether the parties implicitly agreed that the applicant would get her deposits back if she moved out before the end of the one-year tenancy.

16. The respondent submits he did not say he would pay the applicant for the deposits. He says that if he paid the applicant the amount of the deposits when she moved out in November 2019 and then the landlord decided that she was claiming damage when the tenancy ended in June 2020, he would have to pay for it. He also noted that the applicant and her dog caused damage and he did not know how much the landlord would claim. The respondent provided pictures and video evidence showing damage at the time the applicant moved out. The applicant admits that she is responsible for about $200 in damage.

17. The applicant does not specifically submit that the respondent promised to return the deposits. Instead she says there was hardly any damage and that the respondent will get the deposits back. I agree with the respondent that the pictures show that there is damage to the rental unit and without the landlord committing to how much she would claim for this damage the respondent is not in a position to know how much to reimburse the applicant. The parties did not address how they would determine any additional damage potentially caused by the new roommate between the applicant's departure and the lease end. However, the respondent itemized the damage before the new roommate moved in and as mentioned took pictures and videos so at the end of the tenancy it will be clear what damage existed before the new roommate moved in.

18. Further, the evidence shows that applicant knew that the respondent had not promised to give the applicant the deposits back until they were released from the landlord because she originally tried to get the money back from the landlord

herself. The applicant texted the landlord in October 2019 trying to get her portion of the security deposit back and all of the pet damage deposit. The landlord refused and said that the lease agreement was with the respondent.

19. The applicant texted the respondent and said that she thought she should get the pet damage deposit back because there would be no dog in the rental unit anymore, but she said that she might have to wait until June 2020 when the respondent got it back. The applicant asked the respondent to contact the landlord. The respondent then texted the applicant and told her that he contacted the landlord, but she refused to release the deposits until the "maturity" of the agreement and after an inspection.

20. The applicant then told the respondent that once he got a new tenant the respondent should give his security deposit to her. The respondent refused and again submits to this tribunal that he did not know how much of the security deposit he would get back either. Therefore, if he gave the applicant back the security deposit and there was damage that the landlord held him responsible for, aside from that caused by the pet, the respondent would have to pay for this. Further, he could not use the new roommate's security deposit to cover this as the new roommate did not cause the damage.

21. Based on the evidence, I find that the applicant has not proved that the respondent agreed to pay the applicant back her portion of the damage deposit or the entire pet damage deposit before the year-long tenancy agreement ended. I find the parties' agreement was tied to the respondent getting the deposits back at the end of the one-year lease term. Therefore, I deny the applicant's claim for the $1,987.50 she paid toward the deposits.

22. To be clear, I have only decided that the applicant is unable to retrieve her portion of the deposits at this time as the tenancy agreement with the landlord has not ended and the respondent does not know yet how much money he is getting back. Nothing prevents either party from applying to the tribunal after the tenancy ends if they are unable to reach an agreement about how much of the deposits the

applicant is entitled to then, subject to filing the claim within the limitation period set out in the *Limitation Act* which applies to this tribunal. The parties at that time can also consider whether the respondent's claim that the applicant broke the lease, damaged his property, and owes him money for bills should be set-off against the amount owed to the applicant from the deposits.

TRIBUNAL FEES AND EXPENSES

23. 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. Here the applicant was unsuccessful, so she is not entitled to reimbursement of her tribunal fees. There was no request for other expenses.

ORDER

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

Kathleen Mell, Tribunal Member