Civil Resolution Tribunal

Date Issued: June 12, 2020

File: SC-2019-008716

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Slade v. Waldhauser,* 2020 BCCRT 660

B E T W E E N :

ELI SLADE

APPLICANT

A N D :

MONIQUE WALDHAUSER

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is between 2 former roommates. The applicant, Eli Slade, says the respondent, Monique Waldhauser, provided him unreasonably short notice to move out. He claims reimbursement for $357.50 in rent and $453.67 for short-term rental accommodations. He also claims $425 for the return of a damage deposit.

2. Ms. Waldhauser disagrees with Mr. Slade's claims. She says Mr. Slade was rude and unclean, and that his conduct made her feel unsafe. She says she therefore reasonably had her landlord change the rental unit locks on short notice. She also says Mr. Slade left the rental unit without adequately cleaning it, failed to return the unit and building keys, and breached a set of "moveout rules". Ms. Waldhauser says that because of this, she is entitled to keep the $425 damage deposit.

3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or CRT proceedings 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope,* 2018 BCSC 282, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessary.

6. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

8. CRT staff advised that Mr. Slade did not view Ms. Waldhauser's comments in a statement of facts. I asked the CRT to provide the comments to Mr. Slade. He provided submissions, and Ms. Waldhauser commented on those submissions.

Preliminary Issue #1 – CRT Jurisdiction over Roommate Disputes

9. It is undisputed that Ms. Waldhauser entered into a tenancy agreement with the landlord of the rental unit. Mr. Slade was not a party to the tenancy agreement. So, I find this is to be a "roommate dispute".

10. Generally, the CRT does not take jurisdiction over residential tenancy disputes. These are decided by the Residential Tenancy Branch (RTB), which adjudicates statutory entitlements under the *Residential Tenancy Act* (RTA). However, I accept the RTA 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 CRT's small claims jurisdiction as set out in CRTA section 118.

Preliminary Issue #2 – Late Evidence

11. Mr. Slade provided his evidence to the CRT late. Ms. Waldhauser says it should be excluded. I disagree, as Ms. Waldhauser had the opportunity to review the late evidence and provided comments. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to Ms. Waldhauser in allowing the late evidence, and I do so.

ISSUES

12. The issues in this dispute are as follows:

    a. Did Ms. Waldhauser breach any obligation to provide Mr. Slade reasonable notice to move out, and if so, what is the appropriate remedy?

    b. Did Ms. Waldhauser breach any obligation to return the damage deposit, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Mr. Slade bears the burden of proof on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

14. This dispute is largely about determining what the parties agreed would happen if their roommate arrangements did not work out. For the reasons that follow, I find Ms. Waldhauser breached her obligation to provide Mr. Slade until the end of September 2019 to move out. I also find Ms. Waldhauser breached her obligation to return Mr. Slade's damage deposit. I will discuss the appropriate remedies below.

15. The background facts are largely undisputed. Ms. Waldhauser was a tenant under a residential tenancy agreement for an apartment-style rental unit. In August 2019 Mr. Slade saw Ms. Waldhauser's website ad for a roommate. Mr. Slade paid a $425 deposit and the first months' rent to Ms. Waldhauser. Mr. Slade says the monthly rent was $870 but based on the website ad and Ms. Waldhauser's submissions I find he paid $825.

16. Mr. Slade moved in on the evening of August 31, 2019. The parties' relationship deteriorated soon after. On September 16, 2019, Ms. Waldhauser emailed Mr. Slade and asked him to move out by the afternoon of September 17, 2019. She advised the rental unit locks would be changed on that date.

17. Ms. Waldhauser says she let Mr. Slade move out on September 20, 2019, but this is contradicted by her text messages and emails. I find Mr. Slade moved out on September 17, 2019.

Issue #1. Did Ms. Waldhauser breach any obligation to provide Mr. Slade reasonable notice to move out, and if so, what is the appropriate remedy?

18. Mr. Slade says Ms. Waldhauser should have provided until the end of September 2019 for him to move out. Ms. Waldhauser disagrees and says she was entitled to have him move out earlier due to his conduct.

19. A roommate has no rights or responsibilities under the RTA. I find that the parties' rights and responsibilities are governed by contract law. Although the parties did not frame the issues in this way, I find Mr. Slade's claims are for breach of contract.

20. Based on the undisputed facts, I find the parties entered into a contract for Mr. Slade to rent accommodations from Ms. Waldhauser. However, the parties did not write down the terms of their agreement or otherwise agree in advance on the process for Mr. Slade to move out.

21. I find it was an implied term of the parties' rental agreement that Ms. Waldhauser would provide reasonable notice to Mr. Slade before ending their rental agreement. I find the evidence shows Ms. Waldhauser ultimately breached her obligation to provide reasonable notice.

22. On September 12, 2019, Ms. Waldhauser texted Mr. Slade about a number of tenancy issues. She asked Mr. Slade to start looking for accommodations. She said that she required him to provide 1 month of notice before he moved out. Mr. Slade refused to move out in a reply text. Ms. Waldhauser replied she needed him out by noon on September 30, 2019.

23. The text messages show that by the next day, Mr. Slade had agreed to move out as requested. He wrote that he expected to move out within the last week of September 2019. However, on September 16, 2019, at 11:26 a.m., Ms. Waldhauser

emailed Mr. Slade and asked him to move out by September 17, 2019 at 3:00 p.m. She advised her landlord would change the rental unit's locks at that time. Mr. Slade said he would try his "hardest" to move by then, though it would be "a challenge".

24. From the above, I find Mr. Slade agreed to move out by the end of September 2019. As such, I conclude that under the circumstances, this was reasonable notice under the parties' agreement. However, he did not agree to shortening the notice period to September 17, 2019, and instead moved out because the locks were being changed. I find Ms. Waldhauser breached her obligation to provide reasonable notice.

25. Ms. Waldhauser says she shortened the notice period in part because she was afraid of Mr. Slade as he initially refused to leave. She also said Mr. Slade made threats and acted threateningly, though I find her submissions vague on whether this went beyond "threatening to never move out", as she says.

26. I find it was an implied term of the parties' agreement that they would treat each other respectfully and not engage in behaviour that would make either party unsafe or could reasonably cause a party to feel unsafe. The CRT implied a similar term in *Kun v. Spears,* 2019 BCCRT 1195, which is not binding on me but which I find persuasive.

27. I find that a breach of this term would potentially justify a shortened notice period. However, I am not satisfied that Mr. Slade breached this term by initially refusing to leave. Mr. Slade refused through text and I find there is no evidence he threatened Ms. Waldhauser's safety at any time. At most I find the parties may have raised their voices at each other, as shown in the emails and a recording of Ms. Waldhauser. Mr. Slade also agreed the next day to move within Ms. Waldhauser's requested timeframe.

28. Ms. Waldhauser also says Mr. Slade should have returned after September 17, 2019, to further clean the rental unit. She says she would have allowed him to

return for this purpose. I find this inconsistent with Ms. Waldhauser's submission that she was afraid of him.

29. Further, I find that Ms. Waldhauser did not shorten the notice period because of safety issues. In the September 16, 2019 email, Ms. Waldhauser explained she was only providing 1 day of notice because of Mr. Slade's failure to be neat and respectful, which forced her to leave him a note. Although the note itself is not in evidence, the text messages show it was about an unflushed toilet. Mr. Slade texted Ms. Waldhauser on September 16, 2019 that he had received both the email notice and the note. He explained he did not flush the toilet at night because he did not want to wake her. I do not find this made the shortened notice period reasonable.

30. Ms. Waldhauser also says the lessened notice was justified because she warned him that if his behaviour did not improve the tenancy would be ended with only 1 day of notice. I find the evidence, including the emails and text messages, do not show that Ms. Waldhauser provided such warnings.

31. In summary, I conclude Ms. Waldhauser breached the parties' rental agreement by failing to provide reasonable notice. I must next consider the appropriate remedy.

32. Mr. Slade claims reimbursement for $357.50 in rent for the month of September 2019 as he moved out before the month end. Mr. Slade also claims $453.67 for short-term rental accommodations from September 17 to 27, 2019, until he could find a new residence.

33. In a breach of contract, a party may claim for damages arising from the breach. I find that Mr. Slade's claim for short-term rental accommodations arose from Ms. Waldhauser's failure to provide reasonable notice. Ms. Waldhauser disagrees with this claim and says Mr. Slade advised her that he would stay with friends. I find there is no evidence Mr. Slade's friends made such an offer.

34. Mr. Slade provided 3 receipts to support his claim for $453.67. I find Mr. Slade is entitled to reimbursement for that amount.

35. However, I find Mr. Slade is not entitled to reimbursement of rent. The parties originally contemplated that Mr. Slade would stay until September 30, 2019. Mr. Slade would not have been entitled to the return of any rent under this arrangement. Payment of this amount would result in "double recovery" for Mr. Slade. I dismiss Mr. Slade's claim for $357.50 in rent.

Issue #2. Did Ms. Waldhauser breach any obligation to return the damage deposit, and if so, what is the appropriate remedy?

36. As noted above, Mr. Slade paid a $425 deposit to Ms. Waldhauser. Ms. Waldhauser's website ad, viewed by Mr. Slade, referred to the sum as a damage deposit.

37. As the RTA does not apply to this dispute. I find Mr. Slade's entitlement to the return of the damage deposit depends on the parties' rental agreement.

38. Mr. Slade says he was under the impression that the deposit would be returned if there was no damage to any property. He says he left the rental unit without damaging it and as clean as he could make it, given the short timeframe to move out.

39. Ms. Waldhauser disagrees and says the deposit would only be returned if Mr. Slade did not damage the rental unit and complied with Ms. Waldhauser's "moveout rules". These rules are documented in Ms. Waldhauser's September 16, 2019 text messages to Mr. Slade. They include requiring Mr. Slade to return the building key and for Mr. Slade to only move his things out while under Ms. Waldhauser's direct supervision.

40. Based on the evidence and submissions, I find it was an implied term that Mr. Slade would not damage the rental unit beyond ordinary wear and tear. In return, Ms. Waldhauser would return the deposit within a reasonable time period after the tenancy ended. I am not satisfied the moveout rules were part of this agreement as there is no indication they were provided or agreed to by Mr. Slade when he paid the damage deposit.

41. The parties provided considerable evidence on the cleanliness of the rental unit when Mr. Slade left. I am not satisfied that the parties agreed that Mr. Slade had to thoroughly clean the rental suite when he left. The circumstances are inconsistent with such an obligation. Mr. Slade had only stayed there for slightly over 2 weeks. When Ms. Waldhauser provided the September 16, 2019 notice, Mr. Slade had only 1 day to finish cleaning and moving out. If I am wrong and Mr. Slade had further cleaning obligations, I find that Mr. Slade met these obligations by making reasonable efforts under the circumstances.

42. Ms. Waldhauser also says Mr. Slade agreed to stay for 3 months, as this was a stated requirement in her website ad. She says she is entitled to keep the deposit because he breached this obligation. I am not satisfied Mr. Slade breached this term, given that Ms. Waldhauser asked Mr. Slade to leave early. I also find that staying 3 months was not a condition for the return of the damage deposit as the ad does not say so. Ms. Waldhauser also did not provide evidence to support any loss arising from such a breach.

43. Having established the terms for the deposit's return, I find Mr. Slade complied with his obligations. Ms. Waldhauser says that Mr. Slade did not damage anything other than "a few dents of wear-n-tear". As Ms. Waldhauser did not provide any details, I do not find the damage to be beyond reasonable wear and tear. I find that Ms. Waldhauser must return the $425 deposit.

44. Notably, Mr. Slade did not return any keys to Ms. Waldhauser on September 17, 2019. I find Mr. Slade breached an implied term of the rental agreement for him to do so. Ms. Waldhauser says her rental unit lock was unexpectedly not replaced until the next day. Ms. Waldhauser says Mr. Slade therefore had access to both the rental unit and the building until the next day, causing her stress and anxiety.

45. While I considered reducing the deposit for this breach, there is no evidence the breach caused Ms. Waldhauser any compensable loss. I find the non-binding decision of *Eggberry v. Horn et al,* 2018 BCCRT 224 persuasive, which states that claims for mental distress must be supported by evidence. Ms. Waldhauser did not

provide evidence to support any compensable loss arising from mental distress. There is no indication that Ms. Waldhauser paid for any resulting expenses, such as changing the locks. I make no deduction for Mr. Slade's failure to return the keys.

46. Finally, I note that Ms. Waldhauser said she was entitled to compensation for cleaning and cleaning products, costs from running another ad for a new roommate, loss of rental income, and further stress and anxiety. However, she specifically wrote that these were claims she "may be suing for" depending on the outcome of this decision.

47. I make no findings on these claims. However, Ms. Waldhauser should be aware that she may be prevented from applying for compensation for these claims in the future. In *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819,* 2017 BCCRT 22, the CRT chair noted that a legal principle called cause of action estoppel may stop someone from pursuing a matter that was or should have been the subject of a previous proceeding. I make no findings about whether cause of action estoppel applies or whether Ms. Waldhauser is otherwise barred from applying for compensation for these claims. This is because I find the facts and arguments for these claims are not fully before me.

CRT FEES, EXPENSES AND INTEREST

48. I have found Mr. Slade is entitled to damages of $453.67 for short-term accommodations. The *Court Order Interest Act* applies to the CRT. Mr. Slade is entitled to pre-judgement interest on this damages award, calculated on the amounts and from the dates of the 3 underlying invoices, to the date of this decision. This equals $6.37.

49. I have also found Mr. Slade is entitled to the return of the $425 damage deposit. Mr. Slade is entitled to pre-judgment interest on this amount, calculated from September 17, 2020 (the date the deposit should have been returned) to the date of this decision. This equals $6.13.

50. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Mr. Slade is the substantially successful party and is entitled to reimbursement of $125 in CRT fees. As the parties did not claim for dispute-related expenses, I do not order any.

ORDERS

51. Within 14 days of the date of this order, I order Ms. Waldhauser to pay Mr. Slade a total of $1,016.17, broken down as follows:

    a. $453.67 as reimbursement for short-term accommodations resulting from breach of contract,

    b. $425.00 for the return of a damage deposit,

    c. $12.50 in pre-judgment interest under the *Court Order Interest Act*, and

    d. $125.00 in CRT fees.

52. Mr. Slade is entitled to post-judgment interest, as applicable.

53. Mr. Slade's remaining claims are dismissed.

54. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act,* which says that CRTs may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to

consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

55. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

David Jiang, Tribunal Member