



Civil Resolution Tribunal

Date Issued: July 9, 2020

File: SC-2020-001550

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Neuparth v. Palatin*, 2020 BCCRT 763

BETWEEN:

DONNA NEUPARTH

APPLICANT

AND:

JANINE PALATIN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute between former roommates. The applicant, Donna Neuparth, rented a room in a home owned by the respondent, Janine Palatin. Ms. Neuparth says that Ms. Palatin threw her out of the home before the agreed-upon end date for their roommate arrangement. She says that Ms. Palatin refused to return her \$400 deposit or \$240 in unused rent, and that she incurred expenses of \$958.22 for

moving assistance and temporary housing. Ms. Neuparth asks for an order that Ms. Palatin pay her \$1,598.22 plus interest and expenses. Ms. Palatin admits that she ended the roommate arrangement, but denies that she owes Ms. Neuparth any money.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT 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. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these 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. Therefore, I find that this dispute is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.
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.

ISSUES

8. The issues in this dispute are:
 - a. Whether Ms. Palatin breached the parties' roommate agreement,
 - b. Whether Ms. Neuparth is entitled to a refund of \$240 for the unused portion of her rent,
 - c. Whether Ms. Neuparth is entitled to the return of a \$400 deposit,
 - d. Whether Ms. Neuparth is entitled to reimbursement for \$58.22 she paid for assistance in moving, and
 - e. Whether Ms. Neuparth is entitled to reimbursement for \$900 for temporary accommodations.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is relevant to the issues before me and necessary to provide context to my decision.
10. Ms. Neuparth and Ms. Palatin both say that they made a roommate agreement in October of 2019. The agreement was on a month-to-month basis, and required Ms. Neuparth to pay Ms. Palatin a \$400 deposit and \$800 per month in rent. There is no dispute that Ms. Neuparth paid these amounts to Ms. Palatin by e-transfer.

11. Ms. Neuparth moved into the home on October 30, 2019. The parties quickly determined that they were not compatible as roommates. In a series of emails on November 20, 2019, Ms. Neuparth gave notice that she would move out on December 31, 2019. Ms. Palatin accepted this decision.
12. The parties disagree about what occurred after that point, but it is apparent that their interactions were not entirely pleasant. On November 21, 2019, Ms. Palatin sent an email to Ms. Neuparth asking her to leave the home by November 30, 2019. It is not clear whether Ms. Neuparth agreed to this. The next morning, Ms. Palatin decided that Ms. Neuparth's presence in her home put her health and safety at risk. She told Ms. Neuparth that she wanted her to move out immediately. Ms. Neuparth did not agree to this, and left the home to go to work.
13. While Ms. Neuparth was absent, Ms. Palatin packed Ms. Neuparth's belongings and placed them outside the home. She arranged for a locksmith to change the locks, and sent Ms. Neuparth a text message to advise that her belongings were outside the home. She calculated Ms. Neuparth's entitlement to a rental refund for 7 nights at a rate of \$26.67 per night, for a total of \$189.69. However, she deducted the \$110.56 cost of the locksmith and retained the deposit as loss of income for December rent. Ms. Palatin determined that Ms. Neuparth was entitled to a refund of \$76.13. Ms. Palatin says that she left a cheque in this amount with Ms. Neuparth's belongings, but Ms. Neuparth denies that she received it. I find that nothing turns on this as the parties agree that the cheque was not cashed.
14. Ms. Neuparth's position is that Ms. Palatin "broke [the] contract for November 2019 rent", did not return money owed to her, and caused her to incur additional expenses for which she seeks compensation. Ms. Palatin's position is that her actions were justified as Ms. Neuparth's presence in her home had a negative effect on her health and she was not sure what would happen next. Ms. Palatin provided a physician's note that indicates that her medical situation is "provoked by stress and severe anxiety".

15. Ms. Palatin alleges (and Ms. Neuparth denies) that Ms. Neuparth was shouting, slamming doors and banging cupboards late on November 21 and early on November 22, 2019. Whether or not this was the case, Ms. Palatin had already agreed that the roommate arrangement would continue until December 31, 2019. There is no indication that the parties agreed Ms. Palatin would be able to end the arrangement unilaterally and immediately for any reason, including her health. While I accept that Ms. Palatin felt Ms. Neuparth's presence in her home had a negative impact on her health, I find that, by removing Ms. Neuparth's access to the home, she breached their agreement.
16. I find that Ms. Neuparth is entitled to damages for the breach of the roommate agreement. Damages for breach of contract are intended to place an applicant in the position they would have been in if the contract had been carried out as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39 (*Water's Edge*).
17. I will consider Ms. Neuparth's claim for \$240 in unused rent first. There is no dispute that Ms. Neuparth paid \$800 in rent for the month of November, or that she did not receive accommodation for that entire month. I find that Ms. Neuparth is entitled to a refund of the unused portion of her rent. Although Ms. Palatin calculated the refund for 7 nights at a rate of \$26.67 per night, the time period between November 22 and 30 involves 9 nights. This equals \$240.03. As Ms. Neuparth claimed \$240 for unused rent, I award her that amount.
18. The next consideration is the \$400 deposit. While the parties agree that this deposit was paid, they disagree about what it was for. Ms. Neuparth's position is that it was a damage deposit, while Ms. Palatin says that it was a "non-refundable" security deposit that she used to offset her losses for unpaid December rent. The parties' emails talk about a deposit, but they do not describe it further or discuss the circumstances in which Ms. Palatin would be able to keep it. For the reasons set out below, I find that Ms. Palatin is not entitled to retain the deposit (in whole or in part) no matter how it is characterised.

19. Even if the deposit was intended to be a damage deposit, Ms. Palatin does not submit that Ms. Neuparth caused damage to any area of her home. Although she chose to have a locksmith change the locks, there is no indication that this was the result of any damage caused by Ms. Neuparth. Further, the parties' agreement did not contemplate Ms. Neuparth paying for any home-related expenses. I find that Ms. Palatin may not deduct the cost of the locksmith from the amounts owing to Ms. Neuparth.
20. If the deposit was intended to be a security deposit, I find that Ms. Palatin is not entitled to retain the deposit to address a loss of December rent. Ms. Neuparth was prepared to stay at the home and pay her December rent as agreed. It was Ms. Palatin who ended the arrangement early, and I find that Ms. Neuparth is not responsible for any loss that Ms. Palatin may have experienced as a result of her own decision. Further, Ms. Palatin admits that she did not mitigate her losses by attempting to find a new roommate. I find that Ms. Palatin must return the entire \$400 deposit to Ms. Neuparth.
21. I have also considered Ms. Neuparth's other claims for breach-related damages in the context of *Water's Edge* which, as discussed above, provides that she be put in the same position she would have been in had the breach not occurred. In addition, I have kept in mind that Ms. Neuparth bears the burden of proving her damages.
22. Ms. Neuparth says that she spent \$58.22 on dinner for the friend who helped her move. I do not find Ms. Palatin's suggestion that Ms. Neuparth could have left her belongings outside the house until the next day so that she would not have required assistance in moving them to be reasonable. Ms. Neuparth provided an electronic banking record shows that shows a \$58.22 expenditure at a restaurant on November 22, 2019. It is not clear how the expense was divided between Ms. Neuparth and her friend. Although Ms. Neuparth would have been responsible for her own meal expense, I am satisfied that the breach of the roommate agreement left her unexpectedly deprived of cooking facilities. I find that Ms. Neuparth is entitled to reimbursement of the \$58.22.

23. Ms. Neuparth also claims reimbursement for \$900 that she says she spent on alternate accommodation for the rest of November. She provided a typed, unsigned document stating that Ms. Neuparth paid “Mike” \$900 for room and board between November 22 and December 1, 2019. Unlike each of the other claimed expenses, this payment was not supported by a commercial receipt or an electronic banking record. I find this omission to be significant. Keeping in mind that Ms. Neuparth bears the burden of establishing her claims, I find that she has not proven this expenditure and dismiss this claim.
24. Even if I found that this expenditure had been proven, I would not have ordered the reimbursement of the full \$900. Given my decision that Ms. Neuparth is entitled to the reimbursement of the \$240 in unpaid rent, this would amount to double recovery and would have resulted in Ms. Neuparth being put in a better position than she would have been if not for the breach.
25. In summary, Ms. Neuparth is entitled to reimbursement of \$240 in unused rent, the \$400 deposit, and \$58.22 in expenses, for a total of \$698.22. Ms. Neuparth is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from the date of the breach to the date of this decision, this equals \$8.37.
26. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Ms. Neuparth has been largely successful, I find that she is entitled to reimbursement of \$125 in CRT fees. Ms. Neuparth also claims dispute-related expenses of \$11.37 for a land title search. I am satisfied that this expense is reasonably related to the dispute, and find that she is entitled to reimbursement.
27. Ms. Palatin claimed for reimbursement of a \$25 expense for a medical note. As she was not successful, I dismiss this claim.

ORDERS

28. Within 30 days of the date of this order, I order Ms. Palatin to pay Ms. Neuparth a total of \$842.96, broken down as follows:
 - a. \$698.22 for reimbursement of unused rent, a deposit, and expenses,
 - b. \$8.37 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$136.37 for \$125 in CRT fees and \$11.37 for dispute-related expenses.
29. Ms. Neuparth is entitled to post-judgment interest, as applicable.
30. The remainder of Ms. Neuparth's claims are dismissed.
31. Ms. Palatin's claim for reimbursement of dispute-related expenses is dismissed.
32. 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 tribunals 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.

33. 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.

Lynn Scrivener, Tribunal Member