



Civil Resolution Tribunal

Date Issued: July 15, 2020

File: SC-2020-001203

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perez v. Tejada*, 2020 BCCRT 792

BETWEEN:

CARLOS ENRIQUE BURGUENO PEREZ

APPLICANT

AND:

ISRAEL VILLAVICENCIO TEJEDA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an agreement between roommates. The applicant, Carlos Enrique Burgueno Perez, says that the respondent, Israel Villavicencio Tejada, did

not pay his rent from December 2019 until February 2020. Mr. Perez asks for reimbursement of the \$4,650 he paid to the landlord covering Mr. Tejada's share. Mr. Perez also says that Mr. Tejada took his tools. Mr. Perez asks for \$158 in compensation for these tools.

2. Mr. Tejada says that Mr. Perez agreed he could leave the house in September 2019. Mr. Tejada says he wanted to inform the landlord because he was on the lease, but Mr. Perez did not want him to because there were other people living in the home. Mr. Tejada also says that he did not request his security deposit back and gave it up as a penalty for leaving early. Mr. Tejada denies taking Mr. Perez's tools.
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. In some respects, this dispute amounts to a "he 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 CRT'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.

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 tribunal considers appropriate.
8. Generally, the CRT 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 CRT's small claims jurisdiction as set out in section 118 of the CRTA.

ISSUES

9. The issues in this dispute are:
 - a. Does Mr. Tejeda owe Mr. Perez \$4,650 in rent?
 - b. Did Mr. Tejeda take Mr. Perez's tools and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant, Mr. Perez, must prove his claims on a balance of probabilities.

11. 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.

Does Mr. Tejada owe Mr. Perez \$4,650 in rent?

12. Both parties agreed that they signed a one-year lease with the landlord on May 2, 2019. The landlord is not a party to this dispute. The rent was \$3,100 per month. The parties paid a total security deposit of \$1,550. The parties were working on a project together. It is unclear on the evidence what the project was but apparently both parties had workers helping them and some of these workers lived at the house and were paying Mr. Perez rent, although they were not on the tenancy agreement.

13. Mr. Perez says that the working arrangement only lasted two months and that in June 2019, Mr. Tejada decided he did not want to work together anymore. Mr. Perez says that he reminded Mr. Tejada that they were both still responsible for the rent. He says that people who worked for Mr. Tejada were also still living in the shared home.

14. Mr. Perez says that Mr. Tejada then moved out in September 2019 and did not pay his share of the utilities from May to August. Mr. Perez says that he used Mr. Tejada's security deposit to pay the utilities. Mr. Perez says that in November 2019, Mr. Tejada decided to move to the interior of BC and he took some of his workers. Mr. Perez states that he told Mr. Tejada that if he took the workers that there would not be enough money to pay the rent. Mr. Perez says that the workers went with Mr. Tejada in December 2019 and he was unable to pay the rent.

15. Mr. Perez also says that after all the workers moved out in December 2019, he told Mr. Tejada that he had to pay his half of the rent from December 2019 until March 2020.

16. Mr. Tejada disputes Mr. Perez's account of what occurred. He says that his wife decided to move to BC in September 2019. Mr. Tejada says that he gave Mr. Perez

the option of allowing him and his wife to stay in the house or he would move out. Mr. Tejada says that Mr. Perez indicated he preferred to stay in the house and that he would take responsibility for it. Mr. Tejada notes that there were many workers living there and that somebody was already lined up to take over his room.

17. Mr. Tejada says that his portion of the utilities was paid and that he agreed to let Mr. Perez keep his security deposit as compensation for letting him leave early. Further, Mr. Perez says that he only moved to the interior of BC in January 2020. It is unclear on the evidence where Mr. Tejada was living between September 2019 and January 2020. Mr. Tejada says that during the fall of 2019 there were up to 18 workers living in the house and only 3 of them were his workers. Mr. Tejada says that the other workers left to go back to their homes over the holidays and did not come back. He states this is because Mr. Perez moved out of province and that many of the issues, including the missing tools, were because there were people staying in the home when Mr. Perez was not there.
18. Mr. Tejada provided a witness statement from one of the workers, R, which supports Mr. Tejada's version of events. Mr. Perez says that I should not accept this evidence as this individual works for Mr. Tejada and therefore is not independent. I also note that the statement is based purely on what R says that Mr. Tejada told him. It is therefore hearsay and of limited value as evidence. I find that the text messages between the parties is the best evidence to determine what occurred between them and, as explained below, it better supports Mr. Tejada's version of events than Mr. Perez's.
19. Mr. Tejada provided a translation of the text messages. Mr. Perez did not dispute that the translations were accurate. They show that Mr. Tejada said he was leaving at the end of August 2019 and Mr. Perez indicated that they were waiting to clean the room because somebody else was ready to take it. Mr. Perez told Mr. Tejada to give his keys to another party.
20. Mr. Tejada indicated in the messages that he was out of the house on September 2, 2019. Mr. Perez said on that same day that he was going to keep the house and

wished Mr. Tejada luck in finding another. On September 11, 2019, the parties began to dispute how much money Mr. Tejada owed for utilities. Mr. Tejada said that he paid in July for bills in May. It is unclear from the messages how this was resolved but there was no discussion about Mr. Perez keeping the security deposit to offset the utility bills outstanding. There was also no mention of Mr. Perez keeping the security deposit because Mr. Tejada was leaving early. I find that I need not determine why Mr. Perez kept the security deposit as nothing turns on it.

21. The main theme of the messages is that Mr. Tejada was leaving, and that Mr. Perez agreed and wished him luck. Mr. Perez also did not express any concern about paying the rent and said that he had people waiting to move in. There was also no discussion about what would happen if some of the other people moved out.
22. Mr. Perez asked Mr. Tejada to get his tools out of the house in October 2019. I find this further supports that Mr. Perez believed that Mr. Tejada did not have any right to the house anymore. Mr. Tejada said that he would get the tools out that week. On December 30, 2019, Mr. Perez wished Mr. Tejada a happy new year.
23. Then, on January 2, 2020, Mr. Perez texted Mr. Tejada that they had a problem at the house. He said that Mr. Tejada took the people away and now there was not enough money to pay rent. He said that there was a shortage of \$2,000 per month and suggested that they both pay \$1,000 each for the next four months. I note that this message is inconsistent with Mr. Perez's submissions where he stated that Mr. Tejada moved in November and took workers with him.
24. On February 3, 2020, Mr. Tejada told Mr. Perez that the house was his responsibility. He also noted that Mr. Perez had been collecting \$800 per month from the other people and when that was taken into account, Mr. Perez actually owed Mr. Tejada money. The messages also show that Mr. Perez acknowledged that some of the people went back to their home countries, but he accused Mr. Tejada of taking some of them.

25. Based on the evidence, I find that Mr. Perez agreed to allow Mr. Tejada to leave and indicated that he was willing to keep the house, renting it out to other workers. It is clear that Mr. Perez was not concerned about the rent because other workers were paying to stay there. I also find the fact that Mr. Perez did not request any rent for October and November 2019 is consistent with Mr. Tejada's claim that Mr. Perez verbally agreed that Mr. Tejada was no longer responsible for rental payments under the lease.
26. Things changed when the workers returned home in late 2019 and did not return. Mr. Perez suggests that the other workers leaving renewed Mr. Tejada's responsibility to pay the rent because he took the workers away. Mr. Perez did not establish that Mr. Tejada took any workers away besides the 3 or 4 workers Mr. Tejada admitted taking because he said they worked for him. Further, the evidence does not show that part of the agreement allowing Mr. Tejada to leave the house was dependent on Mr. Tejada not taking any workers with him.
27. As noted above, Mr. Perez rented Mr. Tejada's room to somebody else, he took the keys back and requested that Mr. Tejada take away his possessions. He clearly stated that he wanted to keep the house and wished Mr. Tejada luck in finding a new one. For all these reasons, I find that Mr. Perez entered into an agreement with Mr. Tejada allowing Mr. Tejada to leave the house and Mr. Perez agreed to take over Mr. Tejada's responsibility to pay his half of the rent. Therefore, I dismiss Mr. Perez's claim for unpaid rent.

Did Mr. Tejada take Mr. Perez's tools and, if so, what is the appropriate remedy?

28. Mr. Perez says that Mr. Tejada took his 3-foot ladder and a T-Square ruler. He provided a text from a worker who says that he saw Mr. Tejada with a ladder and the ruler. Mr. Tejada wrote Mr. Perez back and told him he did not take his tools and that the only tools he had belonged to him.

29. Mr. Perez did not provide sufficient evidence to prove that Mr. Tejada took the tools. He notes that Mr. Tejada entered the house to take his own tools back, but this does not prove that he took Mr. Perez's tools. Also, the evidence shows that multiple workers lived in the home. Anyone of them could have taken the tools. Further, even if I had found that Mr. Tejada took the tools, I would not have awarded the \$158 claimed as Mr. Perez provided no evidence about the tools' value.
30. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Mr. Perez was not successful, he is not entitled to reimbursement of his tribunal fees. There was no claim for expenses.

ORDER

31. I dismiss Mr. Perez's claims and this dispute.

Kathleen Mell, Tribunal Member