



Civil Resolution Tribunal

Date Issued: July 21, 2020

File: SC-2020-001069

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Holmes v. Waters*, 2020 BCCRT 805

BETWEEN:

DANIEL HOLMES

APPLICANT

AND:

LEE WATERS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a dispute about a housemate tenancy. The applicant, Daniel Holmes, rented a room to the respondent, Lee Waters. Mr. Holmes claims that Mr. Waters owes \$800 for unpaid rent for February 2020 plus \$250 for unpaid rent for his early move-in. Mr. Holmes also claims Mr. Waters owes \$150 for damage and cleaning costs.

2. Mr. Waters denies these claims. Mr. Waters says he gave adequate notice and he had fully paid his rent when he moved out. Mr. Waters says there was no agreement to pay rent for the early move-in and that he left the property clean.
3. Mr. Holmes is self-represented. Mr. Waters is represented by a friend.

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, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly 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 CRT considers appropriate.
8. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, section 4 of the *Residential Tenancy Act* (RTA) says it does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation, such as this one. It is undisputed that Mr. Holmes rented living accommodations to Mr. Waters and they shared bathroom and kitchen facilities. So, I find the RTA does not apply and this dispute falls within the CRT's small claims jurisdiction set out in 118 of the CRTA.

ISSUES

9. The issues in this dispute are:
 - a. Does Mr. Waters owe Mr. Holmes unpaid rent for February 2020? If so, how much?
 - b. Does Mr. Waters owe Mr. Holmes unpaid rent for his early move-in? If so, how much?
 - c. Does Mr. Waters owe Mr. Holmes a debt for leaving the property in a damaged and unclean condition at the end of his tenancy? If so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove their case on the balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

Does Mr. Waters owe Mr. Holmes rent for February 2020?

11. It is undisputed that Mr. Waters rented a room from Mr. Holmes from the end of July 2019 to February 1, 2020.
12. It is also undisputed that the parties did not have a written contract. A verbal contract is enforceable like a written contract, but it can be harder to prove. A contract requires offer, acceptance, and consideration. I find that Mr. Holmes agreed to rent a room to Mr. Waters for \$800 per month. I find that this was a binding verbal contract.
13. Mr. Holmes says that a verbal condition of the contract required Mr. Waters to provide 1 month of notice before ending the contract. Since Mr. Waters did not dispute this submission, I find that the contract required Mr. Waters to provide 1 month of notice before moving out.
14. Mr. Waters argues that he provided more than 1 month of notice. Mr. Waters emailed Mr. Holmes on December 27, 2019 saying he was moving out on February 1, 2020. However, Mr. Waters sent Mr. Holmes another email on December 30, 2019 saying he wanted to reconsider before deciding whether he will move out. I find that Mr. Water's December 30, 2019 email canceled his December 27, 2019 notice.
15. Mr. Holmes says that Mr. Waters gave notice again on January 15, 2020 that he was moving out on February 1, 2020. Mr. Waters did not dispute this. Based on Mr. Holmes' undisputed submission, I find that Mr. Waters gave notice of his intention to move out on January 15, 2020. It is undisputed that Mr. Waters moved out on February 1, 2020 and the rent was paid up to that date.
16. Based on the above, I find that Mr. Waters breached the contract by failing to provide sufficient notice. I turn to the amount of damages Mr. Holmes is entitled to.
17. The general rule for assessing damages for breaching of contract is that the innocent person is entitled to the amount of money that would put them in the same

position as if the contract had been performed. See, *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319.

18. I find that, based on Mr. Waters' failure to provide 1 month of notice, Mr. Holmes is entitled to the monthly rent for February 2020. So, I find that Mr. Waters owes Mr. Holmes \$800 unpaid rent for ending his tenancy with insufficient notice.

Does Mr. Waters owe rent for his early move-in?

19. Both parties agree that Mr. Waters started paying rent on August 1, 2019 and Mr. Holmes gave Mr. Waters permission to move in early in late July 2019. Mr. Waters says that he offered to pay "a little extra" to move in early but Mr. Holmes said that would not be necessary. Mr. Holmes says that, when Mr. Waters asked to move in early, he told Mr. Waters that they could "figure it out later."

20. I am not satisfied that an agreement existed to charge Mr. Waters additional rent to move in early. As noted above, Mr. Holmes has the burden of proving his claim and I find Mr. Waters' submission that Mr. Holmes waived additional rent to be equally as likely as Mr. Holmes' vague statement that the parties would resolve it later. In the absence of sufficient evidence proving the existence of an agreement, I dismiss Mr. Holmes' claim for additional rent for Mr. Waters' early move in.

Does Mr. Waters owe Mr. Holmes for damaging the property and leaving it in an unclean condition?

21. Mr. Holmes says that Mr. Waters damaged the walls in his room and left garbage and debris in the backyard and garage.
22. The law may include terms in contracts even if the parties did not specifically consider the terms, say them to each other, or write them down. These added terms are called implied terms. I find it was an implied term of the contract that Mr. Waters would not damage the property beyond ordinary wear and tear. I also find it was an implied term of the contract that Mr. Waters would leave the property in reasonably clean condition.

23. I am not satisfied that Mr. Waters damaged his room in excess of reasonable wear and tear. Mr. Holmes provided a photograph showing some wall hanging hooks but he did not provide any photographs showing damage to the walls. Further, Mr. Holmes did not provide any estimates or receipts for repairs. Based on the evidence provided, I am not satisfied that Mr. Waters damaged the property. So, I dismiss this claim.
24. Mr. Holmes also says that Mr. Waters left debris and unwanted items at the property. Although Mr. Waters says he removed all his possessions, Mr. Holmes provided several photographs showing plants and materials left at the property. Based on the photographs, I am satisfied that Mr. Waters breached the contract by failing to remove some items.
25. However, Mr. Holmes did not prove the monetary value to remove the materials. In the absence of evidence of the cost of removal, on a judgment basis, I find that a nominal award of \$100 damages is appropriate. I find Mr. Waters owes Mr. Holmes \$100 for garbage removal.
26. Mr. Holmes is entitled to pre-judgement interest on the \$900 damages for unpaid rent and garbage removal from February 1, 2020, the date the tenancy ended, to the date of this decision. This equals \$7.47.
27. 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. Since Mr. Holmes was substantially successful, I find that he is entitled to reimbursement of his CRT fees, being \$125.

ORDERS

28. Within 30 days of the date of this order, I order Mr. Waters to pay Mr. Holmes a total of \$1,032.47, broken down as follows:
 - a. \$900 as reimbursement for unpaid rent and garbage removal,

- b. \$7.47 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

29. Mr. Holmes is entitled to post-judgment interest, as applicable.

30. 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.

31. 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.

Richard McAndrew, Tribunal Member