Civil Resolution Tribunal

Date Issued: August 14, 2020

File: SC-2020-002321

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jorgensen v. MacLean,* 2020 BCCRT 908

B E T W E E N :

KRISTINE JORGENSEN

APPLICANT

A N D :

JAMIE MACLEAN

RESPONDENT

A N D :

KRISTINE JORGENSEN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This is a roommate dispute.

2. The applicant and respondent by counterclaim, Kristine Jorgensen, rented a downstairs suite from the respondent, Jamie MacLean. Ms. Jorgensen says Ms. MacLean evicted her, without cause, 6 days after Ms. Jorgensen moved in. Ms. Jorgensen claims $1,800 for rent and damage deposit, $500 in moving costs, and $200 in storage fees.

3. Ms. MacLean says she evicted Ms. Jorgensen because she breached the rental contract by failing to pay her damage deposit when due and by using scented products in the home. Ms. MacLean says Ms. Jorgensen intentionally damaged the property and created an unsafe living environment. Ms. MacLean counterclaims $4,125 for property damage, 2 months' rent, 4 days' wage loss and costs for cleaning, lock changes and security cameras.

4. Each party is self-represented.

JURISDICTION AND PROCEDURE

5. 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.

6. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as those decisions are within the jurisdiction of the Residential Tenancy Branch (RTB). However, the RTB refuses jurisdiction over "roommate disputes" such as this one. For that reason, I find this dispute is within the CRT's small claims jurisdiction.

7. 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.

8. 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.

9. 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.

ISSUES

10. The issues in this dispute are:

    a. Did Ms. Jorgensen breach the rental agreement and, if so, what is the appropriate remedy?

    b. Did Ms. MacLean breach the rental agreement and, if so, what is the appropriate remedy?

    c. How much, if anything, must Ms. Jorgensen pay Ms. MacLean for property damage, rent and wage loss, cleaning costs and security costs?

EVIDENCE AND ANALYSIS

11. In a civil claim, such as this one, the applicant, Ms. Jorgensen must prove her claim on a balance of probabilities. The same burden of proof applies to Ms. MacLean as the applicant in the counterclaim. I have reviewed all submissions and evidence, but I will only refer to that which explains and gives context to my decision.

12. Ms. Jorgensen met Ms. MacLean and viewed the downstairs suite on February 21, 2020. The suite includes a bedroom, office, bathroom and TV-room in the basement, with shared kitchen and laundry facilities on the main floor. Ms. Jorgensen moved some items into the suite on February 28, 2020 and took possession of the suite on February 29, 2020. On March 2, 2020 Ms. Jorgensen plugged a "scent holder" into an outlet in the basement. On March 6, 2020 Ms. MacLean left an eviction notice for Ms. Jorgensen, asking her to leave by March 15, 2020. On March 12, 2020 Ms. MacLean told Ms. Jorgensen to leave the following day and gave her a second eviction notice on March 13, 2020. None of this is in dispute.

Did Ms. Jorgensen breach the rental agreement?

13. Ms. MacLean says she evicted Ms. Jorgensen because she breached the rental agreement. Based on the March 6, 2020 written eviction notice, I find Ms. MacLean asked Ms. Jorgensen to move out by noon on March 15, 2020 because she was late paying her damage deposit, because she used chemical scent holders despite being told to keep a scent free environment, and because Ms. MacLean felt the rental arrangement was not working.

14. I find the terms of the agreement between the parties are set out in the February 21, 2020 Rental Agreement. Although the document is not signed, both parties' names are typed into the bottom of the agreement. Based on text messages and emails between the parties submitted in evidence by Ms. MacLean, I find Ms. Jorgensen reviewed, and agreed to, the terms in the agreement on February 22, 2020.

15. The agreement says Ms. Jorgensen will pay $1,200 rent by the 1st of each month and pay a $600 damage deposit upon moving in on March 1, 2020. It also sets out some house rules for the tenant (Ms. Jorgensen), including to turn off all appliances and fully lock the front door "when we leave" (all quotes reproduced as written), not to leave candles unattended or burning at any time, and not to smoke, vape, use drugs, or have parties on the property.

16. Ms. Jorgensen acknowledges she did not pay the damage deposit on March 1, 2020. She says Ms. MacLean agreed that she could pay it the following week. Ms. MacLean says Ms. Jorgensen told her, on February 28, 2020, that she would pay the damage deposit the following week. Ms. MacLean says she was uncomfortable and "not okay" with this agreement. Despite Ms. MacLean's alleged discomfort, she still allowed Ms. Jorgensen to finish moving in, gave her a key, and accepted Mr. Jorgensen's payment of the first month's rent. In the text messages between the parties over the first few days of March 2020, there is no mention of the outstanding damage deposit. On balance, I find it more likely than not that Ms. MacLean agreed that Ms. Jorgensen could pay the damage deposit late, which verbally amended the written rental agreement. So, I find Ms. Jorgensen did not breach the rental agreement by failing to pay the damage deposit by March 1, 2020.

17. Even if I had found that Ms. Jorgensen breached the rental agreement with the late payment, I find she remedied the breach by paying the damage deposit on March 6, 2020. Based on the parties' text messages, I find Ms. Jorgensen sent Ms. MacLean an e-transfer at 1:05 p.m. on March 6, 2020, although Ms. MacLean's bank records show she did not accept the money until March 10, 2020.

18. I now turn to consider the scent holder.

19. Ms. MacLean says that she explained the house rules to Ms. Jorgensen on February 21, 2020 and again on February 29, 2020 and that the verbal house rules form part of the rental agreement. She says she told Ms. Jorgensen never to use any scented products or chemicals in the house. Although verbal agreements are binding, the burden is on Ms. MacLean to show that Ms. Jorgensen agreed to not use scented products or chemicals in the house.

20. Ms. Jorgensen denies that Ms. MacLean told her not to use any scented products, or that the house was a scent-free environment. Ms. Jorgensen says Ms. MacLean told her to use all-natural cleaning products, which Ms. Jorgensen agreed to. This is consistent with Ms. MacLean's March 3, 2020 text message that she wanted "no chemical substances in the house" and that the house was "chemical free". In the

same text Ms. MacLean offered to buy Ms. Jorgensen some “all natural” scent products, which is inconsistent with a scent-free household. I also find the terms of the rental agreement, which allow candles, is inconsistent with a scent-free household. On balance I find Ms. MacLean has failed to show that Ms. Jorgensen agreed to a scent free house.

21. Based on emails between the parties following the March 6, 2020 eviction notice, I find Ms. MacLean offered to extend Ms. Jorgensen’s move out date to March 29, 2020, if Ms. Jorgensen agreed not to continue leaving lights and heaters on, windows open, leaving the door unlocked and speeding down the driveway. As Ms. Jorgensen did not respond to the offer within 48 hours, as requested by Ms. MacLean, I find the parties did not enter into any new agreement about the move out date.

22. Based on emails between the parties I further find Ms. MacLean told Ms. Jorgensen, at 8 pm on March 12, 2020, to leave the house by noon on March 13, 2020. Based on the March 13, 2020 second eviction notice, I find Ms. MacLean evicted Ms. Jorgensen because she continued to use scent holders, leave on the lights and heat and speed down the driveway.

23. To be thorough, I do not find Ms. Jorgensen breached the rental agreement by leaving on lights, heaters, leaving windows open, or speeding down the driveway, as I find those are not terms the parties agreed to. I do not accept Ms. MacLean’s argument that driving slowly on the property was one of the house rules Ms. Jorgensen agreed to prior to moving in, as it is not written in the rental agreement and Ms. Jorgensen says she only agreed to use natural cleaning products in the house.

24. Neither do I find Ms. Jorgensen breached the rental agreement by leaving the front door unlocked. The written agreement states that Ms. Jorgensen shall lock the front door when “we” leave which, I infer, means when both Ms. Jorgensen and Ms. MacLean leave the house. It is undisputed that Ms. MacLean operates a dog care business out of the home, which I infer means she is often home. There is no

evidence before me that Ms. Jorgensen left the door unlocked when both parties left the house. So, I find Ms. MacLean has failed to prove Ms. Jorgensen breached the door lock terms of the rental agreement.

25. In summary I find Ms. Jorgensen did not breach any terms of the rental agreement and, if she did regarding the late damage deposit, that she remedied the breach.

Did Ms. MacLean breach the rental agreement?

26. I do not accept Ms. MacLean's argument that she evicted Ms. Jorgensen for health and safety reasons. I infer Ms. MacLean refers to Ms. Jorgensen's use of electric scent holders which, Ms. MacLean says, emit cancerous fumes and caused her breathing difficulty. While I accept that scent may be unpleasant, I find Ms. MacLean has failed to prove that Ms. Jorgensen's electric scent holders are dangerous to Ms. Jorgensen's health and safety, or the health and safety of others in the home. I find it more likely that Ms. MacLean terminated the rental agreement because she did not like Ms. Jorgensen's behaviour.

27. Ms. MacLean says that she was not required to give Ms. Jorgensen any notice to vacate the home, as she had broken the verbal and written agreement. I disagree. As noted above, I find Ms. Jorgensen did not act and behave how Ms. MacLean wished her to but find those actions and behaviour did not breach the rental agreement. Although Ms. MacLean is entitled to terminate the rental agreement, I find she must provide reasonable notice to do so, for the following reasons.

28. The written rental agreement requires Ms. Jorgensen to provide a minimum of 60 days' notice to end the 12-month agreement. If Ms. Jorgensen provides less than 30 days' notice, she forfeits the return of her damage deposit. The written agreement does not set out any notice requirement for Ms. MacLean and there is no indication there was any verbal agreement about that term. I find it is an implied term of the agreement that Ms. MacLean will provide a reasonable notice period to terminate the contract. It is undisputed that Ms. MacLean initially provided Ms. Jorgensen 9 days' notice that she was ending the rental agreement which Ms.

MacLean subsequently shortened to 7 days. I find that is not a reasonable notice period to end a 12-month roommate agreement, given the tenant must provide 2 months' notice. So, I find Ms. MacLean breached the rental agreement by terminating the agreement without reasonable notice.

What is the appropriate remedy?

29. It is undisputed that Ms. Jorgensen paid Ms. MacLean $1,200 rent for March 2020 and left the suite by March 13, 2020. I find she received accommodation for 14 days, or approximately half the month. So, I find Ms. Jorgensen is entitled to reimbursement of half the monthly rent, or $600, as she did not receive the accommodation she paid for under the rental agreement.

30. Ms. Jorgensen claims moving costs. Ms. MacLean points out that Ms. Jorgensen did not use movers to move in. Ms. MacLean also says Ms. Jorgensen moved in 4 car loads of belongings on February 28, 2020. Given the breakdown of the relationship between the parties, I find it reasonable for Ms. Jorgensen to hire movers to help her move out as quickly as possible on the agreed upon move out date of March 18, 2020. Based on the March 18, 2020 receipt submitted by Ms. Jorgensen, I find she paid $216.75 for moving costs. As I find moving costs a reasonably foreseeable cost of Ms. MacLean's termination of the rental agreement, I find Ms. MacLean must reimburse Ms. Jorgensen $216.75 those costs.

31. Ms. Jorgensen also claims $200 in storage costs but did not provide any evidence of that cost, or any indication that she needed to store any belongings. So, I dismiss Ms. Jorgensen's claim for storage costs.

32. Ms. Jorgensen also claims a refund of her $600 damage deposit. According to the written rental agreement, Ms. Jorgensen is entitled to have the damage deposit returned to her if 30 days' notice is given before moving out and if there is no "irreversible damage done beyond regular wear and tear". I find Ms. Jorgensen is entitled to a return of the damage deposit, subject to any deductions Ms. MacLean

is entitled to for repairing property damage, beyond regular wear and tear. I will address this further below.

33. In summary, I find Ms. MacLean must pay Ms. Jorgensen $600 in rent, $216.75 in moving costs, and refund the $600 damage deposit, less any eligible deductions for property damage repairs.

Must Ms. Jorgensen pay Ms. MacLean for damages, cleaning or repair costs?

34. Ms. MacLean says Ms. Jorgensen intentionally damaged the walls, carpets and floors by spraying scented oils on them, which Ms. Jorgensen denies. Ms. MacLean provided photos that she says show the damage. I accept that some of the photos show faint marks on a wall and the tile floors but find at different angles the marks are not visible. I find the photos do not show any oil dripping down walls and seeping into the wood bannister, or oil stains on the carpet, as alleged by Ms. MacLean. Ms. Jorgensen says she uses natural oils, water and vinegar for cleaning. On balance, I find the faint marks on the wall and tile floor are likely due to Ms. Jorgensen's cleaner. However, I find the faint marks do not constitute irreversible damage beyond reasonable wear and tear, as contemplated in the written agreement.

35. Ms. MacLean also says Ms. Jorgensen damaged the drywall when she moved into the house. Based on Ms. MacLean's March 14, 2020 photos I find Ms. Jorgensen likely chipped the corner of one wall, as paint and drywall chips on the floor indicate the chip was likely new. While the photos show another corner with small marks on it, there is no indication those marks were recently made, so I find Ms. MacLean has failed to prove Ms. Jorgensen chipped that wall corner.

36. Ms. MacLean provided a June 1, 2020 estimate of $295 to repair and paint the drywall. The estimate does not break down the cost for any specific area or set out what, exactly, is needed. On a judgment basis, I find Ms. MacLean is entitled to deduct $50 from the damage deposit to repair and paint the chipped corner wall.

37. I find Ms. MacLean is not entitled to deduct cleaning costs from the damage deposit as she gave Ms. Jorgensen no opportunity to clean the suite. Based on emails between the parties I find the parties initially agreed that Ms. Jorgensen could return to the house on March 18, 2020 to pack up her belongings and clean the suite. However, after Ms. Jorgensen left the house, Ms. MacLean decided to pack Ms. Jorgensen's belongings and leave them outside the house, under cover. Further, from the photos submitted by both parties, I find Ms. Jorgensen did not leave the suite in an unreasonable state.

38. I further find Ms. MacLean is not entitled to deduct the cost of changing the locks or security cameras from the damage deposit. There is no evidence before me that Ms. Jorgensen failed to return her keys to Ms. MacLean under the terms of the written rental agreement. As noted above, I do not find Ms. MacLean's safety and security was threatened by Ms. Jorgensen.

39. In summary I find Ms. MacLean is entitled to deduct $50 from Ms. Jorgensen's $600 damage deposit, to pay for the drywall corner repair.

40. Ms. Jorgensen also claims reimbursement of lost wages to pack Ms. Jorgensen's things and supervise the move. As I find Ms. Jorgensen did not breach the rental agreement, I find she is not responsible for paying Ms. MacLean any damages. So, I dismiss Ms. MacLean's claim for lost wages.

41. I also dismiss Ms. MacLean's claim for 2 days' lost wages due to breathing issues and headaches resulting from the scented products as Ms. MacLean has provided no evidence that the scented products Ms. Jorgensen used caused Ms. MacLean disabling headaches or breathing issues which prevented her from working.

42. In summary, I find Ms. MacLean is entitled to deduct $50 from Ms. Jorgensen's damage deposit for drywall repair. So, Ms. Jorgensen must return $550 of the damage deposit to Ms. Jorgensen. I dismiss the remainder of Ms. MacLean's claims.

43. The *Court Order Interest Act* applies to the CRT. Ms. Jorgensen is entitled to pre-judgment interest on the $600 rent reimbursement and $550 damage deposit refund from her eviction on March 13, 2020 to the date of this decision. She is also entitled to interest on the $261.75 in moving costs from the March 18, 2020 moving date to the date of this decision. The total interest equals $9.01.

44. 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. In this case I find each party paid $125 in CRT fees. As Ms. Jorgensen was mostly successful with her claims and Ms. MacLean was minimally successful in her claims, I dismiss Ms. MacLean's claim for CRT fees and find Ms. Jorgensen is entitled to reimbursement of half her CRT fees in the amount of $62.50. Neither party claimed any dispute-related expenses and so I make no order about expenses.

ORDERS

45. Within 30 days of the date of this order, I order Jamie MacLean to pay Kristine Jorgensen a total of $1,483.26 broken down as follows:

    a. $600.00 as reimbursement for unused March rent,

    b. $550.00 as partial refund of the damage deposit,

    c. $216.75 as reimbursement for moving costs,

    d. $9.01 in pre-judgment interest under the *Court Order Interest Act*, and

    e. $62.50 in CRT fees.

46. Ms. Jorgensen is entitled to post-judgment interest, as applicable.

47. I dismiss the remainder of both parties' claims.

48. 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.

49. 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.

Sherelle Goodwin, Tribunal Member