



Civil Resolution Tribunal

Date Issued: August 14, 2020

File: SC-2019-010862

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hillman v. Wiseman*, 2020 BCCRT 902

BETWEEN:

SHAWN HILLMAN

APPLICANT

AND:

RAYMOND WISEMAN

RESPONDENT

AND:

SHAWN HILLMAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This is a “housemate” tenancy dispute. The respondent, and applicant by counterclaim, Raymond Wiseman, rented a room in his home to the applicant, and respondent by counterclaim, Shawn Hillman. Mr. Hillman claims \$375 for the return of his damage deposit following the termination of his tenancy.
2. Mr. Wiseman says that Mr. Hillman did not pay his final month of rent, and he counterclaims for \$750 for unpaid rent. However, Mr. Wiseman’s submissions acknowledge that he has not returned the \$375 damage deposit, so he says that Mr. Hillman owes a combined balance of \$375.
3. Each party is self-represented in this dispute.

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. This dispute involves a “he said, he said” scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or CRT proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the CRT’s mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written

evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I 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 CRT considers appropriate.
8. The CRT does not generally take jurisdiction over residential tenancy disputes, because these are decided by the Residential Tenancy Branch. 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. Wiseman rented living accommodations with shared kitchen and bathroom facilities to Mr. Hillman. 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. Is Mr. Hillman entitled to the return of his \$375 damage deposit?
 - b. Does Mr. Hillman owe Mr. Wiseman \$750 for December 2019 rent?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Hillman, as the applicant, must prove his claim on a balance of probabilities. Similarly, Mr. Wiseman, as the applicant by counterclaim, must prove his counterclaim to the same standard. I have read all the

submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.

Is Mr. Hillman entitled to the return of his \$375 damage deposit?

11. The parties agree that Mr. Hillman paid Mr. Wiseman \$375 for a rental damage deposit at the beginning of November 2019. Mr. Hillman moved out of Mr. Wiseman's home by November 30, 2019. There is no evidence before me showing that Mr. Hillman caused any damage to Mr. Wiseman's home, or did anything that authorized Mr. Wiseman to keep any part of the damage deposit. In a December 13, 2019 letter to Mr. Hillman, Mr. Wiseman acknowledged that he owed Mr. Hillman \$375 for the damage deposit, although he claimed Mr. Hillman owed more than that in rent. Mr. Wiseman does not directly deny Mr. Hillman's submission that the damage deposit return was due within 15 days of Mr. Hillman's November 30, 2019 departure.
12. Having considered the evidence, I find that Mr. Wiseman owes Mr. Hillman \$375 for the unreturned damage deposit.

Does Mr. Hillman owe Mr. Wiseman \$750 for December 2019 rent?

13. The undisputed evidence is that Mr. Hillman paid \$750 for November 2019 rent on November 8, 2019. Mr. Wiseman says he provided Mr. Hillman with a housemate tenancy agreement around that time, which Mr. Hillman delayed signing. Mr. Hillman does not confirm when he first received a copy of the tenancy agreement. While the date on the agreement copy in evidence is partially obscured, I find it is legible and shows that Mr. Hillman signed the agreement on November 15, 2019. Mr. Hillman does not deny agreeing to the terms of the tenancy agreement, or that it was a condition of his tenancy that he follow certain house rules, including those set out in the agreement.
14. The tenancy agreement said that Mr. Hillman must provide 1 full month of notice to terminate the tenancy. The agreement clarified that this meant notice by the last day of a month was required in order to move out at the end of the next month. The

agreement said that “all agreements” had to be in writing, but did not say that notice to terminate the tenancy needed to be written.

15. The parties had disagreements shortly after Mr. Hillman moved in on November 9, 2019. Mr. Wiseman says Mr. Hillman broke some of the house rules, such as no overnight guests and excessive noise, among others. Mr. Wiseman says he told Mr. Hillman that he needed to obey the rules if he wanted to continue living there.
16. In contrast, Mr. Hillman and his girlfriend, NA, say that Mr. Wiseman verbally agreed that NA could stay overnight occasionally, and that Mr. Wiseman said uncomfortable and inappropriate things to them. NA said that Mr. Hillman was unaware of the tenancy agreement contents because he did not keep a copy of the signed tenancy agreement, and Mr. Wiseman only provided him with a “blank contract”, which I infer from context means an unsigned copy. But Mr. Hillman does not say he failed to sign the agreement, or that the unsigned copy provided by Mr. Wiseman differed from the signed copy. Further, Mr. Hillman does not deny being aware, from the beginning of his tenancy, that he was required to follow certain house rules.
17. Mr. Hillman says that on November 12, 2019, Mr. Wiseman asked that he look for a new place to live, because things were not working out. Mr. Hillman says he agreed, and he took this as Mr. Wiseman’s notice for him to vacate, but Mr. Hillman does not say when he was expected to be out. Mr. Wiseman denies this, and says he only asked Mr. Hillman to obey the rules if he wished to stay, and if he did not want to follow the rules he should leave. There is no direct evidence of a November 12, 2019 conversation, other than each party’s account of it.
18. However, I note that NA’s witness statement said that both she and Mr. Hillman, not Mr. Wiseman, mentioned that it would be best if Mr. Hillman found a new place to live. Further, I found above that Mr. Hillman signed the tenancy agreement on November 15, 2019, after the parties’ conversation where Mr. Wiseman allegedly asked Mr. Hillman to vacate. Mr. Hillman does not explain why he would sign the tenancy agreement if he had already agreed to move out, or if Mr. Wiseman had

already given him notice to vacate. As a result, I prefer Mr. Wiseman's version of the parties' mid-November conversation which, unlike Mr. Hillman's version, is consistent with the documentary evidence. On balance, I find that in mid-November 2019, Mr. Wiseman did not require Mr. Hillman to vacate, and Mr. Hillman did not give Mr. Wiseman verbal notice that he would be leaving by a particular date.

19. By written notice dated November 26, 2019, Mr. Hillman told Mr. Wiseman he was moving out, and that the last day of his tenancy would be November 30, 2019. Given my finding above, that Mr. Hillman did not give verbal notice to end his tenancy in mid-November 2019, I find that he gave notice on November 26, 2019. In his written notice, Mr. Hillman requested that Mr. Wiseman return the damage deposit within 15 days after the end of his tenancy.
20. I find that according to the written tenancy agreement, the November 26, 2019 notice was effective to terminate Mr. Hillman's tenancy as of the end of the following month, December 31, 2019. This means, according to the tenancy agreement, that Mr. Hillman owed rent until December 31, 2019. As noted above, Mr. Hillman did not pay December 2019 rent.
21. Mr. Hillman suggests that Mr. Wiseman agreed Mr. Hillman would leave and not be responsible for December 2019 rent. I find Mr. Hillman has not met his burden of proving there was any such arrangement, as it is not supported on the evidence before me. NA says Mr. Wiseman agreed that "no monies would be owed", and also to refund some or all of Mr. Hillman's December 2019 rent if Mr. Wiseman found a new tenant for that month. But NA's witness statement said this was her opinion of the situation, and she did not say whether she saw or heard the parties agree to a specific new arrangement about notice and rent payments. I find the evidence does not show Mr. Wiseman agreed to any December 2019 rent refund. I also note Mr. Hillman acknowledges that Mr. Wiseman advertised the room for rent following Mr. Hillman's November 26, 2019 termination notice, but I find there is no evidence showing that Mr. Wiseman obtained a new tenant in December 2019.

22. Having weighed the evidence, I find that Mr. Hillman is responsible for paying rent to Mr. Wiseman until December 31, 2019. So, I find he owes Mr. Wiseman \$750 in unpaid rent for December 2019.
23. Mr. Wiseman owes Mr. Hillman \$375 for the damage deposit. Mr. Hillman owes Mr. Wiseman \$750 for unpaid rent. Subtracting these amounts, I find that overall, Mr. Hillman owes Mr. Wiseman \$375.

CRT FEES, EXPENSES, AND INTEREST

24. Mr. Wiseman is entitled to interest under the *Court Order Interest Act*. I find that interest on the \$375 owing is calculated from December 1, 2019, the day the unpaid rent was due, until the date of this decision. This equals \$4.48.
25. 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 find Mr. Hillman was successful in his claim for the unreturned damage deposit, so is entitled to reimbursement of the \$75 he paid in CRT fees. I find Mr. Wiseman was also successful in his counterclaim for unpaid rent, so is entitled to reimbursement of the \$125 he paid in CRT fees. Subtracting these two amounts, I find Mr. Hillman owes Mr. Wiseman \$50 in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Mr. Hillman to pay Mr. Wiseman a total of \$429.48, broken down as follows:
 - a. \$375 in debt for the balance of unpaid rent less a damage deposit,
 - b. \$4.48 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$50 in CRT fees.

27. Mr. Wiseman is entitled to post-judgment interest, as applicable.
28. 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.
29. 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.

Chad McCarthy, Tribunal Member