



Civil Resolution Tribunal

Date Issued: September 8, 2020

File: SC-2020-002789

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eidelshtein v. Leemet*, 2020 BCCRT 1005

BETWEEN:

DAVID EIDELSHTEIN

APPLICANT

AND:

MATTHEW LEEMET

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute between former roommates. The applicant, David Eidelshtein, says that after he ended the roommate arrangement, the respondent, Matthew Leemet, refused to return his damage deposit or reimburse him for his share of household items. Mr. Eidelshtein asks for an order that Mr. Leemet pay him \$847.33.

2. Mr. Leemet denies that he owes Mr. Eidelstein the amount he claims as he says that Mr. Eidelstein breached their agreement, damaged the suite, did not return a doorknob and mailbox key, and incurred a fine with the strata.
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. 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.
6. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, although the *Residential Tenancy Act* (RTA) governs residential tenancies, the RTB refuses jurisdiction over roommate disputes. As this is a dispute between former roommates, I find that the RTA does not apply and that this claim is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.
7. Mr. Eidelstein asked for an order that Mr. Leemet not contact him or other people associated with him. I find that this request is akin to a restraining order, which is not within the CRT's jurisdiction under the CRTA. Therefore, I decline to grant this order. I would point out that Mr. Leemet stated in his Dispute Response that he wishes to have no contact with Mr. Eidelstein.

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 CRT considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Whether Mr. Eidelstein is entitled to the return of his \$550 damage deposit, and
 - b. Whether Mr. Eidelstein is entitled to \$297.33 for his share of the cost of furniture and household items.

EVIDENCE AND ANALYSIS

11. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their positions, and information about other aspects of their relationship. While I have considered all of this information, I will only refer to what is relevant to the issues before me and necessary to provide context to my decision.
12. In July of 2019, along with another individual, SW, the parties signed a 1-year lease agreement for an apartment. The total damage deposit required by the lease was \$1,650, and Mr. Eidelstein paid his \$550 share to the property management company. The roommates bought some furniture and household items for which they each contributed \$764.01.

13. The parties and SW moved into the suite in August of 2019. While they shared some expenses and chores, there was no written agreement to document each individual's responsibilities. At some point, SW moved out and was replaced by another tenant, LM. The parties reimbursed SW for his damage deposit and his share of the furniture costs.
14. In November of 2019, there was a noise complaint that was attributed to guests associated with the parties' apartment. On February 5, 2020, the strata assessed a \$200 fine to the parties. Mr. Leemet paid the fine in full while the parties had discussions about who was responsible for it.
15. Mr. Eidelstein decided that he wanted to move out of the suite before the end of the lease term. He gave notice to the property manager that he would be vacating the suite at the end of March of 2020, and paid his March rent in full. Mr. Eidelstein tried to obtain a refund of his damage deposit from the property manager, but was not successful. It appears that, for administrative reasons, the property manager asked Mr. Eidelstein to obtain reimbursement of his damage deposit from his roommates.
16. The parties had discussions about what amount would be returned to Mr. Eidelstein, but they did not come to an agreement. Mr. Eidelstein says that Mr. Leemet owes him \$550 for his security deposit and \$297.33 for his portion of the shared items. He calculates this entitlement by taking his \$764 share of the furniture and subtracting \$66.67 for his share of the strata fine and \$400 he received from Mr. Leemet on March 30, 2020.
17. Mr. Leemet says that Mr. Eidelstein agreed to a furniture refund of \$649.41 to reflect depreciation. Mr. Leemet also says that Mr. Eidelstein did not pay all of the expenses he was supposed to, caused damage to the walls that needs to be fixed, and retained a door knob and mailbox key. Mr. Leemet says that Mr. Eidelstein owes him \$2,530.15 (which includes \$2,125 for his time spent dealing with the move-out process, finding a new roommate, and on this dispute). However, he did not file a counterclaim.

The Damage Deposit

18. While there is no dispute that Mr. Eidelstein paid a \$550 damage deposit, Mr. Leemet questions whether he is responsible for its reimbursement as he is not the landlord. Text messages in evidence indicate that Mr. Leemet collected a damage deposit from the new tenant. As noted above, the property manager took the position that this was a matter between the tenants and declined to return Mr. Eidelstein's portion of the deposit or take a new deposit from the replacement tenant. As it would appear that Mr. Leemet was left with the new tenant's deposit, I find that it is appropriate for Mr. Eidelstein to make this claim against Mr. Leemet.
19. Mr. Eidelstein asks for reimbursement of his entire damage deposit, but Mr. Leemet says that there is damage to the apartment that will cost more than \$550 to repair. According to Mr. Leemet, the chairs the parties purchased together caused damage to the walls in the dining area, which he says is a shared responsibility. In addition, Mr. Leemet says that Mr. Eidelstein's bedroom walls need to be repainted. Mr. Leemet submitted quotes from painting contractors that show costs of \$651.00 to paint the bedroom and \$923.33 to paint the bedroom and 2 walls in the dining room.
20. While the evidence before me shows a gouge mark on a wall at the same height as a nearby chair, it does not establish that Mr. Eidelstein caused the damage to the dining room walls himself or that the damage occurred while he occupied the apartment. There is also no indication that the landlord has required this damage to be repaired. I find that the evidence before me does not support the conclusion that Mr. Eidelstein is responsible for any costs to fix the dining room walls.
21. My conclusion is different about the walls in the bedroom used by Mr. Eidelstein. The evidence shows that the walls in the apartment were not freshly painted when the parties moved in, and there were a number of scuffs, scrapes, punctures, and other marks on the walls, including in the bedroom used by Mr. Eidelstein. The evidence suggests that the parties asked the property manager to address this pre-existing damage, but nothing was done.

22. In an attempt to cover the marks on his bedroom walls, Mr. Eidelstein says he applied paint that had been left in the apartment. It does not appear that this leftover paint matched what was on the walls, as photographs in evidence show a large number of streaks on the bedroom walls that are darker than the original paint.
23. The parties' lease agreement required that Mr. Eidelstein to obtain permission from the landlord before painting, but Mr. Eidelstein does not suggest that he did so. According to the lease, if the apartment was painted without permission or if the painting was not done in a professional manner, the affected area must be repainted to the landlord's satisfaction. A June 8, 2020 email from the property manager confirmed that the required repainting would be "under tenant's cost for this job".
24. Despite the presence of pre-existing damage on his bedroom walls, I find that Mr. Eidelstein painted without the landlord's permission and is therefore responsible for the cost of re-painting. As the estimated cost of painting the bedroom is higher than the damage deposit, I find that Mr. Eidelstein is not entitled to the return of any portion of his damage deposit. I dismiss this portion of his claim.

Reimbursement of Furniture Costs

25. The evidence confirms that the parties jointly purchased a number of pieces of furniture and household items. Although the parties and SW kept track of who purchased what item and calculated each roommate's share of the cost, there does not appear to have been a written agreement about who would retain ownership of the items or whether there would be any refund of an individual's contribution when they moved out. According to a document in evidence, SW received a refund of \$764.01, being one third of the original cost of, when he left the apartment. There was no discount from SW's share for damage or depreciation.
26. I find that the refund of money to SW supports the conclusion that the parties intended for each party's contribution to be returned without a discount for damage

or depreciation. Therefore, Mr. Eidelstein is entitled to the return of his \$764.01 contribution.

27. The parties agree that Mr. Eidelstein already received \$400 from Mr. Leemet for his contribution to the furniture, or that some deductions should be made from the remaining \$364.01. The parties disagree about the extent of these deductions. I will address the proposed deductions in turn.
28. Mr. Leemet says there should be a deduction of \$96.99 for professional carpet cleaning that will be required at the end of the lease. I find that this cost should be shared by the occupants of the apartment at the end of the tenancy, not by Mr. Eidelstein.
29. The parties agree that there should be a deduction for the fine imposed by the strata corporation, but they disagree about how much of the \$200 fine is Mr. Eidelstein's responsibility. Mr. Eidelstein says that he is responsible for only one third of the fine, while Mr. Leemet says that Mr. Eidelstein is responsible for the entire sum as it was his guests who caused the disturbance.
30. In a November 19, 2019 text message exchange discussing the incident that led to the fine, Mr. Eidelstein said it was "definitely me" who let the disruptive guests into the building. The text messages also suggest that Mr. Leemet and SW were not home at the time. I find that the parties and SW did not have an agreement to take responsibility for the conduct of each other's guests or for any resulting fines. I find that Mr. Eidelstein alone is responsible for the \$200 fine.
31. Text messages in evidence show that Mr. Eidelstein admitted that he owed Mr. Leemet \$15.75 for a bank charge, \$55.63 for household expenses, and \$45 for cleaning services. I also find that Mr. Eidelstein is responsible for these costs.
32. Mr. Leemet says that Mr. Eidelstein retained a door knob and mail box key from the apartment. Text messages in evidence confirm that there was some discussion of Mr. Eidelstein returning these items to Mr. Leemet, but this did not occur. Mr. Eidelstein did not specifically address these items in his submissions, and it is not

clear to me whether they are still in his possession. Accordingly, I find that it would be appropriate to deduct the \$28.67 cost for a replacement door knob and the \$65 cost for a new mail box key.

33. The total deductions amount to \$410.05, which is higher than the \$364.01 remaining in Mr. Eidelstein's share of the furniture costs. So, I find that Mr. Eidelstein is not entitled to any further reimbursement from Mr. Leemet. Accordingly, I dismiss Mr. Eidelstein's claim.
34. 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. As Mr. Eidelstein was not successful, I dismiss his claim for reimbursement.
35. Mr. Leemet requests compensation for his time spent on this dispute. Rule 9.4(3) states that, except in extraordinary cases, the CRT will not order one party to pay to another party fees charged by a lawyer or other representative. Consistent with this rule, the CRT generally does not award parties expenses for their time spent on a dispute. I dismiss Mr. Leemet's claim in this regard.

ORDERS

36. Mr. Leemet's claim for compensation for time spent on the dispute is dismissed.
37. Mr. Eidelstein's claims, and this dispute, are dismissed.

Lynn Scrivener, Tribunal Member