



Civil Resolution Tribunal

Date Issued: September 11, 2020

File: SC-2020-003149

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *David v. Jameson*, 2020 BCCRT 1023

BETWEEN:

GEOFFROY DAVID

APPLICANT

AND:

GREGORY JAMESON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This is a roommate dispute.
2. The applicant, Geoffroy David, rented a bedroom from the respondent, Gregory Jameson. Mr. David moved out on April 15, 2020. Mr. Jameson has not returned

Mr. David's \$1,500 damage deposit. Mr. David claims the deposit plus \$750 for reimbursement of half of April's rent.

3. Mr. Jameson denies he owes Mr. David any money. He says Mr. David breached the rental agreement by working out of the common living room, staying longer than agreed to, damaging Mr. Jameson's belongings and leaving the apartment unclean. Mr. Jameson asks that the claim be dismissed.
4. Both parties are 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 *Residential Tenancy Act* does not apply to this dispute because the RTB refuses jurisdiction over "roommate disputes". For this reason, I find this dispute is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.
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. Must Mr. Jameson reimburse Mr. David for half of April's rent, and
 - b. Must Mr. Jameson return Mr. David's damage deposit and, if so, for what amount?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one the applicant, Mr. David, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
12. It is undisputed that Mr. David agreed to rent a bedroom in Mr. Jameson's apartment for \$1,500 per month on October 28, 2019. Neither party provided a copy of the October 28, 2019 rental agreement, despite having the opportunity to do so. So, I can only determine the agreement's terms from the other evidence in this dispute.
13. Mr. Jameson says the agreement's term was until April 1, 2020 but that either party could end the agreement with written notice to the other person. Mr. Jameson says the agreement stated that Mr. David was "expected to work throughout the tenancy", as Mr. Jameson worked from home during the day. Mr. David does not dispute Mr. Jameson's statements so I accept them as true.

14. Mr. David worked outside of the apartment during most of the tenancy while Mr. Jameson worked from the apartment's living room. However, on March 17, 2020 Mr. David started working at the apartment during the day because of Covid-19. Mr. David set up his workstation in the apartment's living room. None of this is disputed.
15. Mr. Jameson says that Mr. David breached the tenancy agreement by working at home, and in the living room. I disagree. From Mr. Jameson's statement I find the agreement set out an expectation that Mr. David work outside the home, but not a requirement. I find that an expectation is not a condition of the tenancy agreement. So, I find Mr. David did not breach the tenancy agreement by working in the living room.
16. It is undisputed that Mr. David did not leave the apartment on April 1, 2020. Mr. Jameson says Mr. David told him on March 26, 2020 that he had been unable to find another place to live and would be staying in the apartment until he found somewhere else to live. Based on Mr. David's banking records, I find Mr. David paid one month's rent to Mr. Jameson on March 28, 2020. I find that, by accepting Mr. David's rent payment, Mr. Jameson agreed to let Mr. David stay in the apartment for another month.
17. Mr. Jameson says that, on April 14, 2020, Mr. David told him he had found another apartment. The parties agree that Mr. David moved out of the apartment in the evening of April 15, 2020. There is no evidence in this dispute about how much written notice either party required for the other to end the tenancy agreement. Without that evidence, I find a reasonable amount of notice was an implied term under the agreement. I find 24 hours is not a reasonable amount of notice. So, I find Mr. David breached the tenancy agreement by ending the agreement without reasonable notice. However, that is not the end of the matter.
18. Mr. Jameson says the extra bedroom was unoccupied for 45 days. Mr. Jameson says Mr. David should be responsible for \$2,250 in lost rent for those 45 days. Mr. Jameson did not file a counterclaim in this dispute so I can only consider whether he is entitled to a set off against any amount he might owe to Mr. David. As noted

above, Mr. David claims \$750 for half of April's rent, being the final 2 weeks of the month after he moved out.

19. In an April 14, 2020 handwritten and signed note, both parties agreed that Mr. Jameson would receive his living room and keys back and that Mr. David would receive his damage deposit and the rest of April's rent back. Mr. Jameson says he signed the April 14, 2020 agreement under duress.
20. Duress is a defence to the enforceability of a contract. It is an unfair, excessive, or coercive use of force. If a party enters into an agreement under duress, the agreement is not valid (see *Dairy Queen Canada Inc. v. M.Y Sundae*, 2017 BCCA 442). Mr. Jameson says that Mr. David refused to leave the apartment or clean until he received his damage deposit back from Mr. Jameson. However, Mr. Jameson provided no supporting evidence, such as text messages or emails supporting his allegation that Mr. David refused to leave until the agreement was signed.
21. Based on the parties' submissions, and the text messages in evidence, I find the relationship between the parties had deteriorated. I further find both parties wanted to end the tenancy agreement. However, I do not find that Mr. Jameson was forced to sign the April 14, 2020 agreement. Although Mr. Jameson says Mr. David's behavior was increasingly unpleasant and aggressive, the only example he provided occurred on April 15, 2020, the day following the agreement. I find Mr. Jameson has not proven he signed the agreement under duress.
22. Based on the April 14, 2020 agreement, I find Mr. Jameson accepted Mr. David's breach of the tenancy agreement and entered into another agreement to end the tenancy. Under the agreement, I find Mr. David is entitled to the \$750 he claims. I also find Mr. David is entitled to a refund of his \$1,500 damage deposit under the April 14, 2020 agreement.
23. While Mr. Jameson might be entitled to repair costs for damage that occurred after the April 14, 2020 agreement was signed, the evidence does not show that Mr. David damaged Mr. Jameson's belongings after the parties signed the agreement.

Based on the April 15, 2020 video submitted by Mr. David, I find he left the apartment's common areas clean and tidy upon moving out. I find Mr. Jameson has not proven Mr. David made any further mess or caused the need for any further cleaning, after the parties signed the April 14, 2020 agreement. So, I find Mr. David is entitled to the full \$1,500 damage deposit.

24. In summary, I find Mr. Jameson must pay Mr. David \$750 for April's rent and \$1,500 for the damage deposit.
25. The *Court Order Interest Act* applies to the CRT. Mr. David is entitled to pre-judgment interest on the \$2,250 rent and damage deposit from the April 15, 2020 move out date to the date of this decision. This equals \$11.28.
26. 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. I find Mr. David is entitled to reimbursement of \$75 in CRT fees. Mr. David did not claim reimbursement of any dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order Mr. Jameson to pay Mr. David a total of \$2,336.28, broken down as follows:
 - a. \$2,250 in debt, as a refund of rent and a damage deposit,
 - b. \$11.28 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$75 in CRT fees.
28. Mr. David is entitled to post-judgment interest, as applicable.
29. 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 Province of British Columbia has enacted a provision under *the COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

30. 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