



Civil Resolution Tribunal

Date Issued: September 24, 2020

File: SC-2020-002146

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Schmidt v. Nearingburg*, 2020 BCCRT 1081

BETWEEN:

RYAN SCHMIDT and JAMES POLLOCK

APPLICANTS

AND:

ALISON NEARINGBURG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The respondent, Alison Nearingburg, agreed to rent a bedroom to the applicants, Ryan Schmidt and James Pollock, but cancelled the agreement before the applicants moved in. The applicants claim reimbursement of \$1,500 in security deposit and rent paid.

2. Ms. Nearingburg says she intends to refund the money but has been unable to pay to date.
3. Mr. Schmidt represents himself and Mr. Pollock. Ms. Nearingburg represents herself.

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. 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" with shared kitchen and bathroom, such as this one. For that reason, I find this dispute is within the CRT's small claims jurisdiction.
6. 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.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is whether Ms. Nearingburg must refund the security deposit and rent and, if so, how much and to whom?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the applicants must prove their claim on a balance of probabilities. Ms. Nearingburg provided submissions to the CRT, but no evidence, despite having the opportunity to do so. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
11. Based on email messages between Mr. Schmidt and Ms. Nearingburg, I find Ms. Nearingburg agreed to rent a bedroom to the applicants, starting in August 2019, for \$800 per month, per person. Ms. Nearingburg asked for a \$400 security deposit and \$400 for half of the first month's rent, per person. Based on these emails and Mr. Schmidt's banking records, I find that on June 13, 2019 Mr. Schmidt paid Ms. Nearingburg \$1,600, \$800 for himself and \$800 for Mr. Pollock's share.
12. The parties agree that Ms. Nearingburg told Mr. Schmidt the room was no longer available, before the applicants moved in. Based on emails between Ms. Nearingburg and Mr. Schmidt, I find Ms. Nearingburg cancelled the agreement on, or shortly before, July 15, 2019.
13. Based on emails between Mr. Schmidt and Ms. Nearingburg between July 16, 2019 and March 6, 2020, I find Mr. Schmidt repeatedly asked Ms. Nearingburg to refund the \$1,600 in security deposits and rent. I find Ms. Nearingburg committed to refunding the money to Mr. Schmidt but continuously failed to do so. The parties

agree that Ms. Nearingburg paid Mr. Schmidt \$100 on September 22, 2019. This left the \$1,500 claimed in this dispute.

14. There is no suggestion in the evidence, or the submissions, that Mr. Pollock paid any money to Ms. Nearingburg. I find Mr. Schmidt entered into the rental agreement with, and paid the entire \$1,600 to, Ms. Nearingburg. I find Mr. Pollock paid no money to Ms. Nearingburg and so is not entitled to any refund from Ms. Nearingburg. I dismiss Mr. Pollock's claims.
15. I acknowledge Ms. Nearingburg's submissions that she has been financially unable to pay Mr. Schmidt back. However, while I acknowledge Ms. Nearingburg's situation, inability to pay is not a defence to a debt claim, such as this one. I find Ms. Nearingburg must refund Mr. Schmidt the remaining balance of \$1,500 for security deposits and rent payment.
16. The *Court Order Interest Act* applies to the CRT. Mr. Schmidt is entitled to pre-judgement interest on the \$1,500 security deposit and rent from the date it was paid, June 13, 2019, to the date of this decision. This equals \$32.36.
17. 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. Schmidt is entitled to reimbursement of \$125 in CRT fees. No dispute-related expenses were claimed.

ORDERS

18. Within 30 days of the date of this order, I order Ms. Nearingburg to pay Mr. Schmidt a total of \$1,657.36, broken down as follows:
 - a. \$1,500 as reimbursement for security deposit and rent,
 - b. \$32.36 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.

19. Mr. Schmidt is entitled to post-judgment interest, as applicable.
20. Mr. Pollock's claims are dismissed.
21. 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.
22. 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