



Civil Resolution Tribunal

Date Issued: November 6, 2020

File: SC-2020-005518

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tuyisenge v. Quansah*, 2020 BCCRT 1256

B E T W E E N :

JEAN DE DIEU TUYISENGE

APPLICANT

A N D :

ERNEST QUANSAH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a roommate dispute about a damage deposit.
2. The applicant Jean De Dieu Tuyisenge says the respondent Ernest Quansah failed to refund a \$250 damage deposit paid for a room rental. Mr. Tuyisenge claims a refund of the \$250 damage deposit.

3. Mr. Quansah says he does not need to refund the damage deposit because Mr. Tuyisenge allegedly failed to pay his full rent or share of hydro and left his room messy.
4. The parties are each 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. In *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
7. Section 42 of the CRTA says 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 CRT considers appropriate.

Tribunal jurisdiction over roommate disputes

9. Generally, the CRT does not take jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch (RTB). Section 4(c) of the *Residential Tenancy Act* (RTA) says the RTA does not apply to living accommodation in which a tenant shares a bathroom or kitchen facilities with an owner. Because Mr. Quansah referred to the suite as “his”, I infer that he is the owner and that Mr. Tuyisenge was a roommate sharing common facilities. For this reason, I find this dispute is within the CRT’s small claims jurisdiction set out in section 118 of the CRTA.

ISSUE

10. The issue in this dispute is whether Mr. Quansah must refund Mr. Tuyisenge’s \$250 damage deposit.

EVIDENCE AND ANALYSIS

11. In this civil claim, Mr. Tuyisenge bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.
12. The parties agree to the following facts:
 - a. In February 2020, Mr. Tuyisenge responded to Mr. Quansah’s Craigslist advertisement offering a room for rent in Mr. Quansah’s home.
 - b. Mr. Tuyisenge rented the room for \$650 per month, beginning March 15, 2020.
 - c. Mr. Tuyisenge paid Mr. Quansah a \$250 damage deposit.
 - d. Mr. Quansah has not returned Mr. Tuyisenge’s damage deposit.

13. It is uncontested that Mr. Tuyisenge moved out prior to April 15, 2020.
14. On April 28, 2020, Mr. Tuyisenge wrote to Mr. Quansah providing a forwarding address and requesting a refund of his \$250 damage deposit.
15. Mr. Quansah submits that he does not have to refund the \$250 damage deposit because Mr. Tuyisenge:
 - a. Failed to pay half the rent owing for the March 15-April 15, 2020 month, which was \$325,
 - b. Left his room messy,
 - c. Failed to give him 30 days' notice, and
 - d. Did not pay his share of the hydro expenses.

Did Mr. Tuyisenge pay the full \$650 rent?

16. Mr. Quansah claims that Mr. Tuyisenge paid him \$325, which was only half the month's rent.
17. Mr. Quansah provided a name and phone number for his other tenant, S, who he said would provide evidence that Mr. Tuyisenge failed to pay half the rent and left his room in a "mess". In the CRT's facilitation process, parties are told that if they want to rely on a witness' evidence, they need to provide a statement, and that a phone number is not sufficient: see the non-binding but persuasive decision in *Lee v. B. & M. Auto Craft-Collision Ltd.*, 2018 BCCRT 837, paragraph 12. This is consistent with the CRT's mandate and online format. If Mr. Quansah wished to rely on S's evidence to prove a defence, he is responsible for obtaining and submitting that evidence. Mr. Quansah did not provide any evidence from S. I therefore place little weight on Mr. Quansah's evidence.
18. Based on a bank statement provided by Mr. Tuyisenge, I find that he paid Mr. Quansah \$250 on March 17, 2020, and \$325 on March 20, 2020 and a further \$325

paid on March 31, 2020 for the balance for the month March 15-April 15, 2020. That is, I find Mr. Tuyisenge paid the \$650 rent in full, based on the documentary evidence.

Did Mr. Tuyisenge leave his room messy?

19. Mr. Tuyisenge says he left the room clean. Mr. Quansah disagrees. Mr. Quansah did not provide photographs of the room or otherwise prove that there was a mess or the extent of it. As noted, Mr. Quansah submits he would rely on S's evidence, but then failed to file it. Given that discrepancy, I prefer Mr. Tuyisenge's evidence and find that he left the room clean.

Was Mr. Tuyisenge required to give 30 days' notice?

20. Mr. Tuyisenge says the parties did not agree to a 30-day notice requirement. Mr. Quansah says Mr. Tuyisenge verbally promised him 30 days' notice.

21. I prefer Mr. Tuyisenge's version of events I make this finding because Mr. Quansah has given a version of events inconsistent with the documentary evidence on another key issue. Therefore, I find Mr. Tuyisenge's account of what happened more credible. I find there was no agreement to provide 30 days' notice.

22. Mr. Tuyisenge says that the parties argued, and that Mr. Quansah asked him to move out on 2 hours' notice. Mr. Quansah's evidence is also that there was significant conflict between them. Mr. Tuyisenge says he agreed to move out immediately if Mr. Quansah would refund his damage deposit within 14 days. Both parties agree that the police attended. I accept the agreed evidence that there was some sort of conflict and the police attended.

23. Mr. Tuyisenge also says that prior to this argument, the parties realized they were not a good match as roommates and agreed that Mr. Tuyisenge would move out April 15. The fact of police involvement supports Mr. Tuyisenge's account that the parties were not getting along well, and so I accept his evidence on this point.

24. Given police involvement, I find that the roommate relationship likely broke down making an immediate move necessary. I find that the parties agreed that Mr.

Tuyisenge would move out by April 15. I have also found that there was no agreement that Mr. Tuyisenge had to give 30 days' notice.

Was Mr. Tuyisenge required to pay for some of the hydro?

25. Mr. Quansah says the agreement was to share hydro expenses. Mr. Tuyinsenge says the verbal agreement was that the \$650 rent included hydro.
26. Again, I prefer Mr. Tuyisenge's evidence because I found him more credible than Mr. Quansah due to the lack of any other documentary or independent evidence proving his version of events. Specifically, Mr. Quansah likely could have provided evidence from S about shared hydro expenses, since S was another roommate. He did not do so. Mr. Quansah referred to having emailed Mr. Tuyinsenge to ask him to pay his share of the hydro. However, Mr. Quansah did not file a copy of the email. Mr. Quansah also did not provide the alleged hydro bill, nor its amount. For these reasons, I find that hydro was included in the \$650 monthly rent.

Conclusion

27. I find that Mr. Quansah must refund Mr. Tuyisenge the \$250 damage deposit.

TRIBUNAL FEES and INTEREST

28. The *Court Order Interest Act* applies to the CRT. Mr. Tuyisenge is entitled to pre-judgment interest on the \$250 from April 30, 2020, about 14 days after he moved out, by which point I find Mr. Quansah should have refunded his damage deposit, to the date of this decision. This equals \$2.55.
29. 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. While Mr. Tuyisenge was successful, he did not pay CRT fees or claim dispute-related expenses, so I make no order for them.

ORDERS

30. Within 39 days of the date of this order, I order Mr. Quansah to pay Mr. Tuyisenge a total of \$252.55, broken down as follows:
- a. \$250 in debt for the damage deposit refund, and
 - b. \$2.55 in pre-judgement interest.
31. Mr. Tuyisenge is entitled to post-judgment interest, as applicable.
32. 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.
33. 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.

Julie K. Gibson, Tribunal Member

