



Civil Resolution Tribunal

Date Issued: December 18, 2020

File: SC-2020-006564

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chen v. McLean*, 2020 BCCRT 1430

B E T W E E N :

QINWEN CHEN

APPLICANT

A N D :

ANDREW MCLEAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This is a roommate dispute about return of a damage deposit.
2. The applicant, Qinwen Chen, rented a room in the home of the respondent, Andrew McLean. Ms. Chen claims \$500 for a damage deposit that she says Mr. McLean failed to return to her when she moved out.

3. Mr. McLean says he kept the damage deposit because he and Ms. Chen agreed she would stay for an extra 2 weeks in exchange for Mr. McLean keeping the \$500 damage deposit. He says Ms. Chen chose to move out early for personal reasons, and he owes her nothing.
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. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a 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. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.
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.

CRT jurisdiction over roommate disputes

9. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as those disputes are decided by the Residential Tenancy Branch (RTB). The *Residential Tenancy Act* (RTA) governs residential tenancies. RTA section 4(b) says the RTA does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the accommodation owner.
10. Here, Ms. Chen first applied to the RTB, but an arbitrator dismissed the matter on the basis that the parties shared a kitchen, so the RTB found it did not have jurisdiction. Therefore, I find that this claim is within the CRT's small claims jurisdiction, set out in CRTA section 118.

ISSUE

11. The issue in this dispute is whether Mr. McLean must refund Ms. Chen's \$500 damage deposit.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant Ms. Chen bears the burden of proof on a balance of probabilities. I only address the evidence and arguments to the extent necessary to explain my decision.
13. I find the following facts are undisputed:
 - a. In January 2020, Ms. Chen responded to Mr. McLean's Facebook Marketplace ad for a short-term room rental in his residence. The room was advertised for rent from February 1 to April 1, 2020, for \$1,000 per month.

- b. When Ms. Chen contacted Mr. McLean about the room, he advised Ms. Chen that the move out date was a little bit flexible.
 - c. Ms. Chen agreed to rent the room from February 1, 2020 to April 1, 2020.
 - d. Ms. Chen paid Mr. McLean a \$500 damage deposit on January 10, 2020.
 - e. Through text messages on March 11, 2020, Ms. Chen asked Mr. McLean if she could stay until April 5, 2020. Mr. McLean asked if she wanted to stay until April 15, 2020 instead, and Ms. Chen agreed. The parties also agreed that Mr. McLean would keep the \$500 damage deposit as rent for the 2 weeks between April 1 and April 15.
 - f. By text message on March 13, 2020, Ms. Chen advised Mr. McLean that she only wanted to stay until April 5, 2020. Mr. McLean responded that based on their agreement that she was staying until April 15, he had turned down an opportunity to rent the room for those 2 weeks. He told her he was not prepared to amend their agreement and that she had the room until April 15 for the agreed \$500.
 - g. Ms. Chen then advised Mr. McLean that she would stay until April 12.
 - h. By text message on March 28, 2020, Ms. Chen advised Mr. McLean that she was moving out the following day. Ms. Chen moved out on March 29, 2020.
14. The parties also agree that they signed a tenancy agreement on January 13, 2020 based on a template provided by the RTB. Ms. Chen says she never received a copy of it at the time she signed it. She submitted as evidence a copy of the agreement that she says Mr. McLean produced for the RTB proceedings. However, she alleges that Mr. McLean “fabricated” page 2, as it is not completed in the same way as the copy she signed on January 13, 2020.
15. Specifically, Ms. Chen says that the agreement she signed was for a 2-month fixed term from February 1 to April 1, 2020, whereas the copy in evidence shows it as a month-to-month tenancy. Further, she says that the section dealing with the amount

of rent and the parties' agreement about paying utilities was filled out on the agreement she signed, whereas that section of the agreement in evidence is blank.

16. Mr. McLean does not address in his submissions Ms. Chen's allegations that he altered the tenancy agreement for the RTB proceedings. I note he did not file a copy of the agreement in these CRT proceedings. He did, however, submit a text message chain that shows he told Ms. Chen he would fill out "the contract" for 2 months and "we go from there". I infer that the contract he referred to is the tenancy agreement. Based on these text messages, I find it is unlikely the tenancy agreement the parties signed was for a month-to-month tenancy. Further, I find it is unlikely the parties would have signed the agreement without filling in the payable monthly rent or their agreement about utilities payment.
17. However, even though I find the parties likely signed a fixed-term tenancy agreement from February 1, 2020 to April 1, 2020, this does not mean that because Ms. Chen moved out before April 1, Mr. McLean must necessarily refund the \$500 damage deposit. The question is whether the parties made a new agreement to extend Ms. Chen's tenancy, and whether that agreement is binding, even if Ms. Chen later changed her mind.
18. I find that even though the tenancy agreement stated Ms. Chen would move out on April 1, both parties understood and agreed that the move out date was flexible, meaning it could be extended beyond April 1, 2020 by agreement. So, while the signed tenancy agreement applied up to April 1, the parties were free to make a new agreement about Ms. Chen's tenancy after April 1, 2020.
19. I find the text messages in evidence show that on March 11, 2020, the parties agreed Ms. Chen would extend her tenancy until April 15, with Mr. McLean keeping the \$500 damage deposit in exchange. I find the parties' text messages constitute a legally binding contract. That is, I find there was an offer, acceptance, and consideration exchanged. While Ms. Chen tried to amend that contract 2 days later, asking if she could move out on April 5 for a pro-rated amount of rent, Mr. McLean declined to amend their binding March 11, 2020 agreement, as he was entitled to do. I find Ms.

Chen then affirmed the contract, and confirmed she would stay until April 12, for the agreed \$500.

20. Ms. Chen argues that Mr. McLean never told her he was looking for another roommate after her. However, I find nothing turns on whether Mr. McLean declined an opportunity to rent his room to someone else because Ms. Chen had agreed to stay until April 15. While such a circumstance could be evidence of Mr. McLean's reliance on their agreement, I find Mr. McLean does not need to prove an actual loss of opportunity for their agreement to be enforceable.
21. I find that Mr. McLean performed his obligations under the agreement, as Ms. Chen was welcome to remain in the room until April 15. I find Ms. Chen chose to leave early on her own accord and that Mr. McLean never agreed to refund any money if she did so. Further, I find that because Ms. Chen provided Mr. McLean with less than 24 hours' notice that she was moving out early, Mr. McLean had no opportunity to mitigate his loss by finding another renter for those 2 weeks. Therefore, I find Mr. McLean was entitled to keep Ms. Chen's \$500 damage deposit as rent for the period of April 1 to April 15, 2020. I dismiss Ms. Chen's claims.
22. 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. The applicant was unsuccessful and so I dismiss her claim for CRT fees. Neither parties claimed any dispute-related expenses.

ORDER

23. I order Ms. Chen's claims, and this dispute, dismissed.

Kristin Gardner, Tribunal Member