Civil Resolution Tribunal

Date Issued: December 24, 2020

File: SC-2020-005774

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Nelson v. O'Callaghan,* 2020 BCCRT 1457

B E T W E E N :

DANIELLE NELSON

APPLICANT

A N D :

LIAM O'CALLAGHAN

RESPONDENT

A N D :

DANIELLE NELSON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a roommate dispute. The applicant (and respondent by counterclaim), Danielle Nelson, claims $1,987.50 for pet and security deposits she paid to the respondent (and applicant by counterclaim), Liam O'Callaghan. As discussed further below, these claims were the subject of an earlier dispute SC-2019-009467 in which Ms. Nelson's claims were dismissed.

2. Mr. O'Callaghan denies Ms. Nelson is entitled to the deposits' return. In his counterclaim, Mr. O'Callaghan says Ms. Nelson breached the parties' roommate agreement, damaged his and the landlord's property, and also failed to pay for internet and utilities and moving fees. Mr. O'Callaghan asks for an order that Ms. Nelson be "held accountable for her false claims". He also counterclaims for $2,000 for property damage, the unpaid fees, and for breach of the lease agreement, plus $1,000 for stress and "wrongfully suing" him.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.

5. 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. Here, I find that I am 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 the interests of justice.

6. 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.

7. 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.

8. Generally, the CRT does not take jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* does not apply to this dispute because the RTB refuses jurisdiction over 'roommate disputes', such as this one. For that reason, I find the dispute is within the CRT's small claims jurisdiction as set out in section 118 of the CRTA.

9. I note Mr. O'Callaghan says Ms. Nelson improperly disclosed confidential CRT facilitation discussions, and in his evidence refers to messages he sent during facilitation in the earlier dispute SC-2019-009467. Disclosure of confidential facilitation discussions is prohibited under section 89 of the CRTA and CRT rule 1.11, unless both parties agree. However, I do not have authority in this dispute to punish a breach of the CRTA in the earlier dispute. In any event, I have not relied on Mr. O'Callaghan's statements made in the CRT's facilitation stage and nothing turns on them.

SC-2019-009467 – is Ms. Nelson's claim res judicata or already decided?

10. In the earlier dispute SC-2019-009467, a CRT member issued a decision on May 22, 2020 in which she dismissed Ms. Nelson's claims and the dispute (see *Nelson v. O'Callaghan*, 2020 BCCRT 563). That earlier claim was also for the return of $1,987.50 in deposits, as in this current dispute. However, at paragraph 22 of the

decision, before the order dismissing Ms. Nelson's claims, the CRT member wrote that she had only decided Ms. Nelson could not retrieve her deposits "at this time". This was because the tenancy agreement with the landlord (who was not a party to that dispute or this one) had not yet ended. The CRT member stated that nothing in her decision prevented either party from applying to the CRT after the tenancy ended, subject to the limitation period. It is undisputed there is no limitation issue here, as the parties moved in together in June 2019.

11. The relevant law is "*res judicata*", a Latin phrase which means "already decided", an issue the parties did not directly address. Nonetheless, I must address whether the claim before me for the deposits' return was "already decided" in the earlier decision that dismissed Ms. Nelson's claims. If I find the claim was already decided in the earlier dispute, I cannot hear the dispute again.

12. The doctrine of *res judicata* includes issue estoppel and cause of action estoppel. Issue estoppel prevents a party from raising an issue that was already decided in a previous proceeding. Cause of action estoppel prevents a party from pursuing a matter that was, or should have been, the subject of a previous proceeding (see *Erschbamer v. Wallster*, 2013 BCCA 76).

13. Issue estoppel occurs where the same question was previously decided in a final judicial, or tribunal, decision, and the parties in both decisions were the same (see *Tuokko v. Skulstad*, 2016 BCSC 2200).

14. Cause of action estoppel occurs where there is a previous and final judicial, or tribunal, decision between the same parties on the same cause of action. The cause of action in both proceedings must not be separate and distinct and the basis for the cause of action must have been argued, or could have been argued, in the first proceeding (see *Erschbamer*). No separate cause of action exists where the factual situation that would entitle someone to a remedy is the same in both proceedings. In other words, a party cannot relitigate issues simply by arguing different legal bases around the same factual situation (see *Tuokko*).

15. Ordinarily, I would find an order dismissing a claim means the same claim cannot be relitigated and is *res judicata*. However, given the CRT's flexible mandate and the CRT member's express qualification of her decision's scope, that it only applied to Ms. Nelson's claims **at that time**, I find the factual situation is sufficiently different in the dispute before me than it was in the first dispute. Namely, that the tenancy agreement with the landlord has undisputedly ended. Alternatively, Ms. Nelson's cause of action had not arisen yet at the time the earlier dispute was dismissed. Either way, I find Ms. Nelson's claim in this dispute has not already been decided. I say the same about Mr. O'Callaghan's counterclaim, which the earlier CRT decision also expressly left open for him to pursue at a later date.

ISSUES

16. The issues in this dispute are:

    a. Is Ms. Nelson entitled to the return of her pet and damage deposits?

    b. Is Mr. O'Callaghan entitled to damages for alleged breach of contract, property damage, utilities and move in/out fees, and stress?

EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, the applicant Ms. Nelson must prove her claims on a balance of probabilities. Mr. O'Callaghan must prove his counterclaim to the same standard. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.

18. The following facts are undisputed:

    a. The parties moved in together in June 2019.

    b. Ms. Nelson moved out on October 28, 2019, after 5 months.

c. The written tenancy agreement was only between Mr. O'Callaghan and the landlord, and Ms. Nelson did not sign it. As noted above, the landlord is not a party to this dispute.

d. The tenancy agreement was for a fixed one-year term, ending May 31, 2020. It says the tenant is responsible for any "move in/move out fees" charged by the strata corporation.

e. The tenancy agreement required a $1,325 security deposit and a $1,325 pet damage deposit.

f. Ms. Nelson paid Mr. O'Callaghan half the $1,325 security deposit, or $662.50, and the entire $1,325 pet deposit as the only pet was Ms. Nelson's dog. In turn, Mr. O'Callaghan paid Ms. Nelson's deposits and his own half of the security deposit to the landlord.

g. The landlord has now refunded the deposits to Mr. O'Callaghan.

19. Mr. O'Callaghan drafted a rental agreement he wanted Ms. Nelson to sign dealing with their own roommate agreement. It indicated that it was for 6 months and then on a monthly basis. Part of the drafted agreement stated that the landlord and the strata would reimburse the pet deposit when their "standards were met" when the tenancy agreement ended. It also provided for a $500 penalty to be paid by the party who failed to provide 30 days' notice of contract termination. Ms. Nelson says Mr. O'Callaghan never gave this roommate agreement to her, which Mr. O'Callaghan denies. It is undisputed she never signed it. Ms. Nelson says she and Mr. O'Callaghan simply verbally agreed she would only commit to a 6-month tenancy. I will return to this roommate agreement in my discussion of Mr. O'Callaghan's counterclaim below.

20. On the evidence before me, I find at the time Ms. Nelson paid the deposits to Mr. O'Callaghan he implicitly agreed to return them to her when the main tenancy agreement with the landlord ended, subject to reasonable deductions for any damage to property. In other words, the purpose of the deposits was to secure against damage

to the landlord's property, and not for any alleged breach of the roommate agreement as Mr. O'Callaghan appears to allege.

21. Mr. O'Callaghan submitted video of scratched floors and baseboards, and there are photos of them in evidence as well. Ms. Nelson disputes she is responsible for all these scratches, noting they may be pre-existing. In any event, as noted above, it is undisputed the landlord returned all of the paid deposits to Mr. O'Callaghan. There is no evidence before me suggesting the landlord made any deductions. Given this, I find Ms. Nelson is now entitled to a refund of the deposits she paid for the landlord's security against property damage, given the landlord's refund.

22. Mr. O'Callaghan argues that if Ms. Nelson breached one of their roommate agreement's terms, this means he can keep her security and pet deposits. I do not agree, and even if I found the unsigned written roommate agreement's terms applied, that document did not contemplate such an arrangement. The tenancy agreement with the landlord also did not contemplate it. Again, the deposits at issue were a security or damage deposit plus a pet deposit for any damage to the landlord's property.

23. In other words, whether Ms. Nelson breached the parties' verbal roommate agreement is not a basis to withhold refunding her the deposits that were paid as security for damage to the landlord's property. I address below Mr. O'Callaghan's counterclaim, including whether Ms. Nelson damaged his own property or caused him to incur expenses to clean or fix the landlord's property.

24. Subject to my discussion below, I order Mr. O'Callaghan to refund Ms. Nelson $1,987.50 as claimed, for her paid security and pet deposits.

Mr. O'Callaghan's counterclaim

25. Mr. O'Callaghan counterclaims $2,000 for "damages, unpaid fees and bailing of the lease" and $1,000 for "causing immense stress and wrongfully suing me".

26. I will deal with the $1,000 claim first. Mr. O'Callaghan alleges that Ms. Nelson advanced false claims with the CRT and that this negatively impacted his grade point average at BCIT and in turn his future earnings potential. I find Ms. Nelson's claim for the return of her paid deposits was legitimate. In any event, I find Mr. O'Callaghan's claim about his grades and future earnings potential speculative and too remote to be compensable in the context of this dispute. I also find it unproven, as he provided no evidence of his grades or future earnings.

27. Further, while I accept the CRT proceeding has caused Mr. O'Callaghan some stress, I find there is no evidence before me that Ms. Nelson wrongfully caused him stress, nor do I find the stress is proved to be at a level that might result in damages. Minor inconveniences and trivial upsets are not compensable. The parties' roommate agreement was not a "peace of mind" contract such that inconvenience might be compensable. Having to participate in litigation in itself is not a compensable "harm". I dismiss Mr. O'Callaghan's $1,000 counterclaim.

28. I turn then to the $2,000 claim. Mr. O'Callaghan alleges Ms. Nelson broke the lease by leaving before a year, by damaging his personal belongings, and by consistently paying rent late. He also says she failed to pay certain utilities and fees charged by the strata corporation.

29. First, even if Ms. Nelson had paid rent late, Mr. O'Callaghan has not proven how that caused him a loss. I dismiss that aspect of his counterclaim.

30. Second, the evidence shows Ms. Nelson only agreed to a 6-month term. She left a month early on October 28, 2019, but the evidence shows this was after giving 30 days' notice and Mr. O'Callaghan agreed to it. He found a new roommate for November 1, and the parties' text messages show that between September and October 2019 he never suggested Ms. Nelson would need to make up any difference in the rent he would collect from the new roommate and what she paid. I find Mr. O'Callaghan is not entitled to the $150 monthly difference in rent as he claims, and I also note he has not proved he could not have charged a new roommate the same

rent Ms. Nelson paid. I dismiss this $300 aspect of Mr. O'Callaghan's counterclaim for lost rent.

31. Further, I find the fact that Ms. Nelson did not sign the 6-month roommate agreement does not mean the 12-month lease term with the landlord "supercedes" it, as Mr. O'Callaghan alleges. I also find Ms. Nelson never agreed to pay $500 or any amount for any breach of the parties' agreement, a term that was in the written roommate agreement she did not sign. I dismiss this $500 aspect of the counterclaim.

32. On balance, I find Ms. Nelson is responsible for her $75 share of the move-in fee paid to the strata and for a $200 "move out violation" the strata charged Mr. O'Callaghan for Ms. Nelson's move-out, and which the evidence shows he paid. This equals $275.

33. Next, Ms. Nelson admits she owes $76.89 for utilities as claimed.

34. I turn then to Mr. O'Callaghan's allegations about damage to his own property that he says Ms. Nelson caused. Mr. O'Callaghan says, and his witness AO agrees, Ms. Nelson's dog scratched his fabric couch and scratched his coffee table. They also say Mr. O'Callaghan had to clean up the dog's urine on the floor. However, Mr. O'Callaghan submitted no evidence that he incurred any financial loss for clean-up or for property damage. He submitted no evidence about the couch or table's value. The photo of the sofa in evidence does not show any significant damage. The parties' contemporaneous email evidence shows he voluntarily offered to care for Ms. Nelson's dog at various times. As for his sofa, Ms. Nelson says he bought it used for $60, which Mr. O'Callaghan did not deny.

35. The evidence indicates Ms. Nelson accepted her dog had done some damage and she agreed to settle the matter by paying $200 for property damage, which figure is referenced in the earlier CRT decision. I find Mr. O'Callaghan has not proved any damage beyond $200. I acknowledge Ms. Nelson had earlier offered an additional $110.61 as "misc. goodwill to resolve issue", I find she is not bound by that offer since the matter did not resolve before my adjudication of this dispute.

36. In summary, I find Ms. Nelson owes Mr. O'Callaghan a total of $551.89. After deducting this amount from the $1,987.50 I have ordered above, I find Mr. O'Callaghan owes Ms. Nelson $1,435.61.

INTEREST, FEES, AND EXPENSES

37. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Nelson is entitled to pre-judgment interest on the $1,435.61 from June 15, 2020 to the date of this decision. I choose June 15, 2020 as by this date the landlord likely had returned the deposits to Mr. O'Callaghan. This interest equals $4.35.

38. Under section 49 of the CRTA and the CRT's rules, as Ms. Nelson was successful in this dispute I find she is entitled to reimbursement of $125 in paid CRT fees. As Mr. O'Callaghan was largely unsuccessful, I dismiss his claim for reimbursement of CRT fees. No dispute-related expenses were claimed.

ORDERS

39. Within 30 days of this decision, I order Mr. O'Callaghan to pay Ms. Nelson a total of $1,564.96, broken down as follows:

    a. $1,435.61 in debt,

    b. $4.35 in pre-judgment COIA interest, and

    c. $125 in CRT fees.

40. Ms. Nelson is entitled to post-judgment interest, as applicable.

41. 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.

42. 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.

Shelley Lopez, Vice Chair