



Civil Resolution Tribunal

Date Issued: January 29, 2021

File: SC-2020-006488

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Phillips v. Roberts*, 2021 BCCRT 109

BETWEEN:

LUKE PHILLIPS

APPLICANT

AND:

MEGAN ROBERTS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about the end of a “roommate” tenancy. The applicant, Luke Phillips, rented a room in a house from the respondent, Megan Roberts. Mr. Phillips says Miss Roberts ended his tenancy without sufficient notice. Mr. Phillips claims a total of \$993

for lost wages, hotel and storage costs, lost property, lost “potential” wages, paying more for a new residence because of time pressure, and stress, which he says were caused by Miss Roberts’ insufficient notice.

2. Miss Roberts says Mr. Phillips notified her that he was moving out, and later wanted to stay longer than he originally said, which she did not accept. She says that on the original move-out date, she gave Mr. Phillips sufficient notice to move out on a later date, as instructed by the police. Miss Roberts says she refunded Mr. Phillips’ rental deposit and unused rent, did not cause Mr. Phillips any of his claimed losses, and owes nothing.
3. Each party is self-represented in this dispute.

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). 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. Although the parties’ submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT’s mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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, because they are decided by the Residential Tenancy Branch (RTB). However, section 4(c) of the *Residential Tenancy Act* (RTA) says the RTA does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation. In an August 17, 2020 decision that is in evidence, the RTB declined jurisdiction to hear the parties' dispute about essentially the same issues raised in this CRT dispute. The RTB found that under section 4(c) of the RTA, the RTA did not apply to Mr. Phillips' living accommodation at Miss Roberts' home. I find that the CRT has jurisdiction to hear this dispute, which involves debt or damages as set out in section 118 of the CRTA.

ISSUE

9. This issue in this dispute is whether Miss Roberts gave Mr. Phillips sufficient move-out notice, and if not, does she owe him \$993 or another amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Phillips must prove his claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The undisputed evidence is that in September 2019, Mr. Phillips moved into a room in a house Miss Roberts owned. Miss Roberts emailed Mr. Phillips a roommate

agreement and a list of house rules. The agreement said that Mr. Phillips needed to give at least 30 days advance written notice to Miss Roberts before moving out. It also said that Miss Roberts could terminate the agreement for repeated violations of the house rules, if Mr. Phillips was not a good “fit” with his housemates, or if he was otherwise not suitable. The agreement was silent about whether Miss Roberts needed to give Mr. Phillips any notice.

12. Mr. Phillips did not sign the agreement, but he replied, “Looks good”, and asked if Miss Roberts would give him 1 month of notice if she wanted him to move out, although it could “be shorter if there are really serious issues.” Miss Roberts replied that “If there are issues I would for sure try to give you a month’s notice.” I find that the parties agreed to the roommate agreement, with an additional term that Miss Roberts would try to give Mr. Phillips 1 month notice if she terminated the tenancy. On balance, I find that their roommate agreement was not governed by the RTA.
13. On January 29, 2020, Mr. Phillips emailed Miss Roberts, “This is my month’s notice so February would be my last paying month.” Mr. Phillips said that he was not getting enough full-time work, and intended to seek a job in a different community that was a significant distance away. He said that he had a job interview in that different community. He also said that if he did not get the job he would not move out right away. Mr. Phillips then said that if Miss Roberts wanted, he could give her as much notice as possible when he obtained a job sometime in the future and would move out at that point.
14. Miss Roberts responded via email on January 30, 2020, and said, “No problem at all. Thank you for giving me adequate notice!” Miss Roberts indicated that she would advertise Mr. Phillips’ room for rent, and that if he ended up staying in the area past February 2020, they could “work something out. No worries there, I am pretty flexible.”
15. Mr. Phillips says Miss Roberts’s January 30, 2020 email meant that she agreed to let him stay in his room for an indefinite period of time past the end of February 2020, and then move out at some point in the future with little notice. Miss Roberts disagrees, and says she found a new roommate through her advertisement, who was

scheduled to move in on March 1, 2020. She texted Mr. Phillips on February 9, 2020, and emailed him on February 10, 2020, saying that she could not be flexible, and that Mr. Phillips' original notice period and February 29, 2020 move-out date would apply. Mr. Phillips disagreed, and asked to stay and continue paying rent for an indefinite period beyond February 29, 2020, until he decided to move out or Miss Roberts gave him the 1 month move-out notice that she agreed to by email in September 2019.

16. Having weighed the evidence, including the parties' submitted correspondence, I find that Mr. Phillips gave Miss Roberts adequate notice that he would be moving out by the end of February 2020. I find Miss Roberts accepted that notice and move-out date. I also find that Mr. Phillips wanted an option to delay his move-out for an indefinite period past the end of February 2020, depending on his circumstances. I find Miss Roberts' statement, that the parties can "work something out," was not an acceptance of Mr. Phillips' proposal for an indefinite delay in the end of his tenancy. On balance, and given that Miss Roberts also suggested nearby job opportunities for Mr. Phillips, I find it likely that her offer was only for helpful suggestions to Mr. Phillips about available accommodation options for March 2020. I find that Miss Roberts did not agree to Mr. Phillips' proposed delay.
17. However, from February 10, 2020 onward, Mr. Phillips continued to say he was allowed to stay in his room until he found a satisfactory job, or until Miss Roberts gave him 1 month "eviction" notice and the 1 month had passed. Miss Roberts consistently responded that he had already given her notice, and was required to move out by February 29, 2020. I find that Miss Roberts' February 9, 2020 insistence that Mr. Phillips leave amounted to her notifying him that he needed to move out.
18. On February 29, 2020, Miss Roberts changed the locks on the house, and the police attended at Mr. Phillips' invitation. I find that later that day, due to a police-related misunderstanding about whether the RTA applied to the tenancy, Miss Roberts agreed to extend Mr. Phillips' move-out date to April 1, 2020. Specifically, Miss Roberts emailed this notice to Mr. Phillips on an RTB form, and said that even though he was a roommate, she filled out the RTB form based on police instructions.

19. I find Mr. Phillips says that he wanted to move out of Miss Roberts' home, but that he wanted to delay doing so because of employment and housing concerns. On balance, I also find that Miss Roberts only gave Mr. Phillips the 30 day move-out notice on the RTB form because of the police advice she received. In the circumstances, I find that Miss Roberts' notice for Mr. Phillips to move out by April 1, 2020 was not a tenancy termination by Miss Roberts, but was an extension of the February 29, 2020 move-out date Mr. Phillips identified in his January 29, 2020 tenancy termination notice. Even if I found that this notice to move out by April 1, 2020 was an "eviction" by Miss Roberts, I find she was entitled to have Mr. Phillips move out by that date based on her agreement to provide Mr. Phillips with 1 month of notice. I also find this satisfied Mr. Phillips' February 2020 request for Miss Roberts to give him 1 month move-out notice. Further, regardless of who terminated the tenancy, I find that the evidence before me fails to show that anything prevented Miss Roberts' February 29, 2020 move out notice from applying to the parties' non-RTA tenancy agreement.
20. I find that Miss Roberts' move-out notice was an agreement with Mr. Phillips that he could stay at Miss Roberts' home until April 1, 2020. Mr. Phillips informed Miss Roberts on March 9, 2020 that he was filing a claim with the RTB for insufficient move-out notice. I find Miss Roberts responded aggressively by text message, demanding that Mr. Phillips leave, but without saying when he should. The parties agree that on March 21, 2020 and without prior notice, Miss Roberts moved Mr. Phillips' possessions onto the deck of the house, and told him to retrieve them. On balance, I accept Miss Roberts' statement that she kept Mr. Phillips' food in a fridge. She did not allow Mr. Phillips to re-enter the house. Mr. Phillips says he found another place to live beginning April 1, 2020. Mr. Phillips agrees that Miss Roberts returned his damage deposit and the unused portion of his March 2020 rent.
21. Miss Roberts says that she was justified in removing Mr. Phillips on March 21, 2020 because he allegedly broke house rules and because she said she felt unsafe. However, I find that there was an implied term in the parties' April 1, 2020 move-out agreement that Miss Roberts would give Mr. Phillips reasonable notice if she demanded that he move out before April 1, 2020. I find that she gave Mr. Phillips no

notice before locking him out, and that this was not reasonable in the circumstances. Further, I find the evidence fails to show that Mr. Phillips' alleged behaviour amounted to a fundamental breach of the parties' roommate agreement, that was serious enough to bring it to an end immediately.

22. I find that by locking out Mr. Phillips on March 21, 2020, Miss Roberts broke her agreement to extend his move-out date until April 1, 2020 unless she provided reasonable notice of an earlier move-out date. I find she is responsible for any proven damages that resulted from this breach of the move-out agreement.
23. Mr. Phillips' did not break down his \$993 claim. However, there is a more detailed description of the claimed amounts in Mr. Phillips' RTB Monetary Order Worksheet (worksheet) that is in evidence. I find that Mr. Phillips' worksheet breakdown applies to his CRT claims, where applicable.
24. Mr. Phillips says he needed to pay for a hotel and a storage locker because of the unexpected loss of his room. The worksheet contains a storage locker receipt for \$124.95 dated March 21, 2020, made out to Mr. Phillips. It also contains a March 21, 2020 hotel receipt for \$115, paid with a credit card whose last 4 digits match those of the card used to pay for the storage locker. I find that Mr. Phillips paid these costs because of the unexpected early move-out perpetrated by Miss Roberts, so she owes him a total of \$239.95 for those costs.
25. Mr. Phillips claims for "lost property." The worksheet says Mr. Phillips' food and beard trimmer were damaged or lost, but Miss Roberts denies this. I find there is no reliable proof that Miss Roberts damaged or lost any of his property, so Miss Roberts owes nothing for it.
26. Mr. Phillips claims for wages lost when dealing with the disputed move-out on February 29, 2020. His worksheet values this loss at \$30. However, there is no persuasive evidence before me, such as pay stubs or deposit slips, showing that Mr. Phillips lost any wages at that time. Even if Mr. Phillips had proven some wage loss on that date, I find that any work missed resulted entirely from his failure to move his

belongings out of Miss Roberts' house on the originally-agreed move-out date. So, I find Miss Roberts owes nothing for this alleged wage loss.

27. Mr. Phillips also says it was possible he was given fewer shifts after missing work on February 29, 2020, which his worksheet values at \$300. He submitted work documents showing that he worked a few shifts per week before and after that date. However, I found above that it was entirely Mr. Phillips' fault if he missed work on February 29, 2020. Therefore, I find any shifts lost as a result of that missed work are also Mr. Phillips' fault. In addition, I find the evidence fails to show that Mr. Phillips lost any income after February 29, 2020, which he admits he cannot prove. I find Miss Roberts owes nothing for the claimed income loss.

28. Mr. Phillips says that because he had to return to the house on March 21, 2020 to deal with his belongings, he was not able to rent a particular, inexpensive room in a new community, and had to pay more for his new accommodation there. His worksheet values this alleged loss at \$500. However, there is no evidence before me proving the cost of the room he missed out on, or the cost of the room he actually rented. Further, I find the evidence, including the text messages allegedly from a prospective landlord, is insufficient to show that an inexpensive rental was rejected because of Mr. Phillips' sudden return to the house on March 21, 2020. I find Miss Roberts does not owe him anything for increased rent costs.

29. Mr. Phillips also says that his housing situation and time pressure caused him stress. However, he does not say whether the alleged stress affected his health or caused him any material losses. He claims no specific dollar amount for stress, and provided no medical evidence. I find Mr. Rogers has failed to prove that his claimed stress was more than minor, or that it rose above the level of ordinary annoyances, anxieties, and fears (see *Saadati v. Moorhead*, 2017 SCC 28 at paragraph 28). So, I find Miss Roberts owes nothing for Mr. Phillips' claimed stress.

30. In his submissions, Mr. Phillips says that he is "seeking punitive damages if possible," without further explanation except that the dispute was unnecessary. I find the evidence does not support punitive damages which, generally speaking, are reserved

for malicious or high-handed conduct. I acknowledge that Miss Roberts' early lock-out of Mr. Phillips without notice was unjustified and inconsiderate. However, I find that considering all the surrounding circumstances, her conduct does not rise to the level of punitive damages.

31. To sum up, I allow Mr. Phillips' claim for \$239.95 in storage and hotel costs only, and I deny the other claimed relief.

CRT FEES, EXPENSES, AND INTEREST

32. 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. Mr. Phillips was partly successful here, so I find he is entitled to reimbursement of half the CRT fees he paid, which equals \$37.50. Miss Roberts paid no CRT fees, and neither party claimed CRT dispute-related expenses.
33. Under the *Court Order Interest Act*, Mr. Phillips is entitled to pre-judgment interest on the \$239.95 owing. I find pre-judgment interest is calculated from March 21, 2020 until the date of this decision. This equals \$1.94.

ORDERS

34. Within 30 days of the date of this order, I order Miss Roberts to pay Mr. Phillips a total of \$279.39, broken down as follows:
- a. \$239.95 in damages for hotel and storage costs,
 - b. \$1.94 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$37.50 in CRT fees.
35. Mr. Phillips is entitled to post-judgment interest, as applicable.
36. 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.

37. 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.

Chad McCarthy, Tribunal Member