Civil Resolution Tribunal

Date Issued: July 7, 2021

File: SC-2020-009407

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McCullough v. Ritter*, 2021 BCCRT 744

B E T W E E N :

LACEY MCCULLOUGH

APPLICANT

A N D :

DILLON RITTER

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This is a roommate dispute.

2. The applicant, Lacey McCullough, moved in with the respondent, Dillon Ritter, in late November 2018. They lived together in a romantic relationship until mid-November 2020. Ms. McCullough claims $2,100 for the return of a pet damage deposit she gave

to Mr. Ritter, which Mr. Ritter gave to the landlord. Ms. McCullough also claims $1,417.28 in moving costs because she says Mr. Ritter gave her insufficient notice that he was terminating the lease and that he agreed to pay those costs.

3. Mr. Ritter says he has not received the pet deposit refund from the landlord. He says that, when he does, he will pay Ms. McCullough $900, which he says is $2,100 minus Ms. McCullough's share of the cleaning, repair, and painting costs, and minus $600 for his company computer Mr. Ritter says Ms. McCullough kept. Mr. Ritter says he offered to help Ms. McCullough with her moving expenses, but she declined to provide any estimates or invoices to show her expenses.

4. Both parties are 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 disputes 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. 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 the interests of justice.

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.

PRELIMINARY ISSUE

9. It is undisputed that the parties are engaged in family law proceedings in the Provincial Court, under the *Family Law Act* (FLA). Mr. Ritter says Ms. McCullough's claims were addressed in the Provincial Court's May 4, 2021 order for spousal support. Mr. Ritter did not submit a copy of the order but says it "can be submitted on request". CRT staff tell parties to submit all relevant evidence during the evidence collection stage, as required under CRT rule 8.1. However, Mr. Ritter chose to submit nothing. In any event, I find it unlikely the Provincial Court order addressed Ms. McCullough's claim for the pet deposit return and moving expenses, given my conclusions below.

10. Ms. McCullough says the Provincial Court order addresses only spousal and child support, guardianship, and parenting, as the parties have a child together. She says the Provincial Court is unable to address her claims for the pet deposit return or moving expenses, because it has no jurisdiction, or legal authority, to do so in the family law proceedings.

11. On March 15, 2021, another tribunal member issued a preliminary decision finding that the CRT has jurisdiction over Ms. McCullough's claims for debt and damages. While that decision is not binding on me, I agree with and adopt the tribunal member's reasoning. I find the CRT has jurisdiction to resolve this dispute because the parties are not "spouses" within the FLA, as explained below.

12. Section 3 of the FLA defines a spouse as someone who has lived in a marriage-like relationship with another person either a) continuously for at least 2 years, or b) has

a child with the other person except for the purposes of Parts 5 – Property Division and 6 – Pension Division. It is undisputed the parties lived together from late November 2018 to mid-November 2020, which is less than 2 years, and that the parties had a child together during that time. So, even though the FLA applies to the parties' guardianship, support, and parenting disputes, it does not apply to the parties' division of property dispute, which I find this is. For this reason, I find the CRT has jurisdiction to consider Ms. McCullough's claims.

ISSUES

13. The issues in this dispute are:

    a. Must Mr. Ritter refund Ms. McCullough the pet deposit and, if so, is he entitled to deduct any expenses from that amount?

    b. Must Mr. Ritter pay Ms. McCullough's moving expenses either under an agreement or as damages for providing insufficient notice that he was ending the tenancy?

EVIDENCE AND ANALYSIS

14. In a civil dispute like this one the applicant, Ms. McCullough, must prove her claims on a balance of probabilities. I have reviewed the submissions provided and weighed the evidence but only refer to that necessary to explain and give context to my decision. I note that Mr. Ritter submitted no evidence, despite being given the opportunity to do so.

15. The parties entered into a romantic relationship in November 2018. Around November 24, 2018 they moved in together, along with Ms. McCullough's dog. Mr. Ritter was the sole tenant listed on the tenancy agreement with the landlord. On November 24, 2018 Ms. McCullough e-transferred $2,100 to Mr. Ritter and Mr. Ritter paid the landlord the deposit the same day. The parties had a child together during their relationship. The relationship ended on October 16, 2020 but the parties

remained living together at that time. The tenancy agreement ended on November 30, 2020. None of this is disputed.

Pet Deposit

16. Mr. Ritter agrees that he will refund Ms. McCullough the pet deposit less monies he says Ms. McCullough owes him, when he receives the pet deposit refund from the landlord. Based on the landlord's December 2, 2020 email and December 23, 2020 text message to Ms. McCullough, I find the landlord refunded the $2,100 pet deposit to Mr. Ritter. The landlord confirmed there was no pet damage.

17. In his Dispute Response dated December 19, 2020, Mr. Ritter said the landlord had not yet refunded him the pet deposit. However, in his submissions Mr. Ritter did not specifically address the landlord's messages to Ms. McCullough. So, I find Mr. Ritter received the $2,100 pet deposit refund.

18. Mr. Ritter did not file a counterclaim for the amounts he says Ms. McCullough owes him. I infer he essentially claims a set off against Ms. McCullough's pet deposit claim. In order to prove he is entitled to a set-off, Mr. Ritter must prove Ms. McCullough owes him money that is reasonably connected to the debt he owes her (see *Wilson v. Fotsch,* 2010 BCCA 226).

19. I find Mr. Ritter's claimed set-off for cleaning and painting costs are reasonably connected to Ms. McCullough's pet deposit claim because they are all debts or claims related to the end of the tenancy.

20. Given Mr. Ritter's Dispute Response, I calculate his claim for Ms. McCullough's portion of cleaning and painting costs to be $600. However, Mr. Ritter provided no evidence that he paid any such costs, or how much he paid. Despite Ms. McCullough's undisputed agreement that she would pay half the cleaning costs, I find Mr. Ritter has failed to prove the amount of set off he is entitled to. As Ms. McCullough denies agreeing to pay any of the painting costs, I find Mr. Ritter has failed to prove that he is entitled to any set off for those costs either.

21. I further find Mr. Ritter is not entitled to set off the $600 he claims for the computer cost because I find such a cost is not a debt and is not sufficiently related to the end of the tenancy and so is not a true set off. Even if it were a true set-off I would still find that Mr. Ritter had not proven that he was entitled to compensation for the computer, or the $600 value he claims for the computer.

22. Overall, I find Mr. Ritter must refund Ms. McCullough the $2,100 pet deposit.

Moving Expenses

23. Ms. McCullough says Mr. Ritter should reimburse her moving expenses because he verbally agreed that he would contribute to her costs, both physically and financially, but failed to do so. The burden is on Ms. McCullough to prove that the parties had an agreement about moving expense payment. A binding agreement requires an offer, acceptance, and consideration, which means transferring something of value. While enforceable, verbal agreements are harder to prove than written ones.

24. I find Ms. McCullough has not proven that Mr. Ritter agreed to pay any certain amount of money to Ms. McCullough at any certain time for moving costs. Rather, Ms. McCullough makes a general claim that Mr. Ritter offered to contribute, or help, and that he failed to do so. I find this insufficient to prove that the parties reached an agreement about what Mr. Ritter would financially contribute to Ms. McCullough's moving expenses.

25. I disagree with Ms. McCullough that Mr. Ritter must pay her moving expenses because he took their joint car, failed to pick up moving boxes as requested, or failed to care for their child while Ms. McCullough packed and moved. Ms. McCullough acknowledges that she had access to a vehicle, and so I find Mr. Ritter's removal o of the car, nor the other actions Ms. McCullough alleges, caused Ms. McCullough to require movers. While I acknowledge that Mr. Ritter's lack of assistance was frustrating to Ms. McCullough, I do not find it obligates him to pay her moving expenses.

26. Ms. McCullough also claims Mr. Ritter is responsible for her moving costs because he provided insufficient notice that the tenancy agreement was ending.

27. It is undisputed that Mr. Ritter advised Ms. McCullough in a November 3, 2020 text that he had given notice to end the tenancy on November 30, 2020. It is also undisputed that Mr. Ritter moved out on November 12, 2020 while Ms. McCullough moved out on November 16, 2020.

28. I find Mr. Ritter provided Ms. McCullough with nearly 30 days' notice of the tenancy termination which, I find, is generally a reasonable notice period to find new rental accommodation. Further, I find Ms. McCullough was already planning on moving out in late October 2020, as she admits to looking for a new home at that time. Further, I find Ms. McCullough was not required to hire movers to move out quickly, in a matter of hours or days, as was the case in *Jorgensen v. MacLean,* 2020 BCCRT 908, which Ms. McCullough relies on. In this dispute I find Ms. McCullough has not proven that Mr. Ritter provided insufficient notice of the tenancy's end, or that if he did, it caused Ms. McCullough to hire movers to move out of the home.

29. On balance, I find Ms. McCullough has failed to prove that Mr. Ritter must pay her moving expenses due to an agreement, or because of any alleged lack of notice. I dismiss Ms. McCullough's claim for moving costs.

30. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. McCullough is entitled to pre-judgment interest on the $2,100 pet deposit refund from December 23, 2020, the day the landlord confirmed he paid the deposit to Mr. Ritter, to the date of this decision. This equals $5.10.

31. 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. However, Ms. McCullough paid no CRT fees and claims no dispute-related expenses and so I find she is not entitled to any reimbursement.

32. Mr. Ritter claimed $300 in dispute-related expenses with no explanation or supporting evidence. Although Mr. Ritter was partly successful in this dispute, I find he is not

entitled to any reasonable dispute-related expenses because he has not proven that he incurred any. I dismiss his claim.

ORDERS

33. Within 14 days of the date of this order, I order Mr. Ritter to pay Ms. McCullough a total of $2,105.10, broken down as follows:

    a. $2,100 in debt for the pet deposit, and

    b. $5.10 in pre-judgment interest under the COIA,

34. Ms. McCullough is entitled to post-judgment interest under the COIA, as applicable.

35. I dismiss Ms. McCullough's claim for moving expenses and Mr. Ritter's claim for dispute-related expenses.

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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

Sherelle Goodwin, Tribunal Member