



Civil Resolution Tribunal

Date Issued: July 8, 2021

File: SC-2021-000228

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Escobar v. Fraser*, 2021 BCCRT 746

BETWEEN:

ALFONSO ESCOBAR

APPLICANT

AND:

HENRY ROSS FRASER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute between former roommates. The applicant, Alfonso Escobar, rented a room from the respondent, Henry Ross Fraser. Mr. Escobar says the room he rented was not “livable” due to items Mr. Fraser left in it, pests, and a water leak. Mr. Escobar asks for an order that Mr. Fraser return \$900 he paid in rent and a \$250

damage deposit. Mr. Fraser says the room was in livable condition and denies that Mr. Escobar is entitled to the return of the amounts he paid for rent or a damage deposit.

2. Mr. Escobar is represented by Darrin Blain, who is a lawyer. Mr. Fraser is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. As part of the CRT's process, parties are instructed to submit their evidence within a particular time frame. Here both parties submitted evidence as required, but Mr. Fraser also submitted receipts for the replacement of carpet and a mattress after the deadline. Mr. Escobar had the opportunity to review this late evidence before making

his reply submissions, although I note that he did not mention it specifically. In the circumstances, I find that Mr. Escobar was not prejudiced by the late evidence and accepting it would not create any procedural fairness concerns. I accept the late evidence and will address it below.

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. In general, the CRT does not have jurisdiction over residential tenancy disputes as these are dealt with by the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). Mr. Escobar says that he made a claim with the RTB but it “would not hear the case”. According to Mr. Escobar, the RTB determined that it had no jurisdiction over his claim given section 4(c) of the RTA, which says that the RTA does not apply where an owner and the tenant share kitchen and bathroom facilities. I agree, and find that this dispute falls within the CRT’s small claims jurisdiction as set out in section 118 of the CRTA.

ISSUES

9. The issues in this dispute are:
 - a. Whether the room Mr. Escobar rented was in livable condition,
 - b. Whether Mr. Escobar is entitled to a refund of \$900 in rent, and
 - c. Whether Mr. Escobar is entitled to the return of the \$250 damage deposit.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, an applicant must prove their claims on a balance of probabilities. I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant and necessary to provide context for my decision.

11. The parties agree that they had a verbal agreement for Mr. Escobar to rent a room in Mr. Fraser's house for \$450 per month. They also agree that Mr. Escobar paid a \$250 damage deposit, and that his rent payments covered the time period to the end of June 2020. Further, they did not do a walk-through to view the room before Mr. Escobar left it. The parties agree on little else. I will address only the points of disagreement that are relevant to the issues before me.
12. Mr. Escobar says that Mr. Fraser left furniture and other items in the room that he had promised to move out and that a water leak flooded the room and damaged some of his clothes. Of more concern were the cockroaches, worms, and rats, which Mr. Escobar says were in the room and disrupted his sleep to the point that, after about a month, he preferred to sleep outside. Mr. Escobar says that he was unable to find a new place to stay until June 15, 2020, when he left the home without notice to Mr. Fraser.
13. For his part, Mr. Fraser says that there was only furniture in the room when Mr. Escobar moved in. He admits that there was a small water leak that was repaired quickly and resulted only in some damp clothes. He says there were no worms or cockroaches in the room before Mr. Escobar moved in, but admits that 3 rats were caught and removed in the first few weeks of Mr. Escobar's being there. Mr. Fraser says that, despite some behaviour that was not compatible with his household, Mr. Escobar was quiet and spent most of his time in his room. He states that it was only after Mr. Escobar left the home in early July that he discovered that the carpet and mattress were stained with what he says was feces. Mr. Fraser provided photos that show a light-coloured carpet and mattress that both have large areas of dark staining. The photos also show generally soiled carpet, a pile of a clothes and other items, and what appears to be food packaging strewn across the floor.
14. Mr. Fraser says that he had to replace the stained carpet and mattress, and that he lost rental income until a new roommate arrived in September of 2020. Although Mr. Fraser mentioned the possibility of filing a counterclaim to recover his alleged

damages, he did not do so. Instead, Mr. Fraser says that Mr. Escobar is not entitled to the return of any portion of the rent or damage deposit.

15. Mr. Escobar's claim for a refund of his rent is based on his position that Mr. Fraser failed to deliver a room that was in livable condition as required by their agreement. Photos in evidence show the room was not left in a clean condition when Mr. Escobar left, but the evidence does not show the room's condition before Mr. Escobar moved in. It also does not prove the presence of worms or cockroaches, or the extent of any disruption associated with pests or the water leak. In addition, the evidence does not establish what the parties' agreement was about furnishings that would be left in the room. Although perhaps not ideal, I find that the available evidence does not support Mr. Escobar's claim that the room was unusable or unlivable.
16. I also find that the evidence does not establish that Mr. Escobar paid rent for a period of time he was not living in the home. As noted, there is no dispute that Mr. Escobar paid rent for the month of June. Mr. Escobar included in his evidence a June 29, 2020 letter in which Mr. Fraser confirmed that Mr. Escobar "rents a room" in his home. It is unclear why this letter would have been necessary if Mr. Escobar left the home on June 15 as he says. Whether or not he chose to sleep elsewhere at times, I find the evidence supports the conclusion that Mr. Escobar did not leave the home until July of 2020 as Mr. Fraser submits.
17. Keeping in mind that Mr. Escobar bears the burden of proof, I find that he has not established that the room was not habitable or that he paid rent after he left the home. Therefore, I find that Mr. Escobar not entitled to the return of all or a portion of the claimed \$900 in rent.
18. Turning to the damage deposit, the parties admit that they did not discuss what the deposit paid under their agreement would be used for. However, in their submissions, they agree that the deposit was a "damage deposit" and there is no suggestion that they treated it as a security deposit.

19. So, I must determine whether Mr. Escobar caused damage to which the damage deposit could be applied. Mr. Fraser submitted that he spent 15 hours doing unspecified work on the room after Mr. Escobar left. However, his submissions about damage centre around the soiled mattress and carpet. According to receipts Mr. Fraser submitted, he spent \$550 to replace these items in July of 2020.
20. Mr. Escobar did not specifically dispute Mr. Fraser's submission that the mattress and carpet were new when he moved into the room or that they needed to be replaced in July 2020. Instead, Mr. Escobar states that there is no evidence of the carpet's condition before or after he lived in the room, and no evidence that he caused any damage.
21. The photos provided by Mr. Fraser show several large areas of dark and obvious staining on the mattress and carpet. It is not necessary for me to determine what substance caused the stains. I note that Mr. Escobar did not make any submissions about the cleanliness of the room when he arrived and, given the degree of soiling on the mattress and carpet, I find this omission to be significant. I also find it to be significant that Mr. Fraser replaced both the mattress and carpet within days of Mr. Escobar leaving the home. I find that it is more likely than not that Mr. Escobar caused the damage to the mattress and carpet. This is so even if there was no walk-through to confirm the room's condition at the end of Mr. Escobar's time in the home.
22. Based on the receipts provided by Mr. Fraser, he spent more than \$250 to replace the mattress and carpet. Therefore, I find that Mr. Escobar is not entitled to the return of the \$250 damage deposit. Accordingly, I dismiss Mr. Escobar's claims.
23. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Escobar was not successful, I dismiss his claim for reimbursement of CRT fees. Neither party claimed dispute-related expenses.

ORDER

24. I dismiss Mr. Escobar's claims and this dispute.

Lynn Scrivener, Tribunal Member