



Civil Resolution Tribunal

Date Issued: May 25, 2022

File: SC-2021-005467

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Divell v. Berube*, 2022 BCCRT 616

BETWEEN:

MARK DIVELL

APPLICANT

AND:

GUYLAINE BERUBE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a “roommate dispute” about residential accommodations. The respondent, Guylaine Berube, rented a room in her home to the applicant, Mark Divell. Mr. Divell says Miss Berube improperly ended his tenancy without notice. Mr. Divell claims \$1,770.50, which includes \$724 for motel accommodations, \$300 for trailer

accommodations and meals, \$136.50 for storage fees, \$60 for fuel costs, \$250 for other meal expenses and \$300 for a rent refund.

2. Miss Berube denies Mr. Divell's claims. She says that Mr. Divell moved out voluntarily so she owes him nothing.
3. The parties are each 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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.
7. Under the *Residential Tenancy Act* (RTA), the Residential Tenancy Board (RTB) has jurisdiction to decide disputes involving rights and obligations under the RTA or under a residential tenancy agreement about a tenant's occupation of a rental unit, among

other things. However, RTA section 4(e) excludes from the RTB's jurisdiction living accommodations in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation. Both parties were given an opportunity to provide submissions about whether this dispute is within the CRT's jurisdiction, which I reviewed and considered. Both parties submitted that Mr. Divell shared the bathroom and kitchen with Miss Berube. Further, there is no evidence that the RTB accepted jurisdiction over this dispute. So, I find that the RTA does not apply to the room rental, and that the CRT is the appropriate forum for this dispute.

ISSUES

8. The issues in this dispute are:
 - a. Did Miss Berube breach the rental agreement by forcing Mr. Divell to move out without sufficient notice? If so, how much does she owe?
 - b. Does Miss Berube owe Mr. Divell a rent refund?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Divell, as the applicant, must prove his claims on a balance of probabilities. Though she had the opportunity to do so, Miss Berube did not provide any evidence. I have read all the parties' evidence and argument but refer only to what I find relevant to provide context for my decision.
10. Mr. Divell rented a room from Miss Berube beginning in November 2020. Mr. Divell married CC, another tenant in Miss Berube's home, in January 2021. Mr. Divell and CC each rented separate rooms from Miss Berube. CC is not a party in this dispute and her rental agreement is not at issue. So, I make no findings relating to CC's tenancy.
11. Neither Mr. Divell nor Miss Berube provided a written rental agreement. Miss Berube says the monthly rent was \$400. Since Mr. Divell does not dispute this, I accept this as accurate. There is no evidence or submissions showing there was an agreement

about how much notice Miss Berube needed to provide before ending Mr. Divell's tenancy. Without evidence of such an agreement, I find a reasonable amount of notice was an implied term of the rental agreement.

Did Miss Berube breach the rental contract by forcing Mr. Divell to move out without sufficient notice?

12. Mr. Divell argues that Miss Berube breached the rental contract by ending his tenancy without prior notice. However, Mr. Divell did not provide any evidence or submissions showing that Miss Berube directly told him to move out. Rather, Mr. Divell says that Miss Berube told CC on May 1, 2021 that he had to move out immediately.
13. CC provided an undated statement saying that she had a discussion with Miss Berube on May 1, 2021 about Mr. Divell's tenancy. CC wrote that Miss Berube was angry because she thought that Mr. Divell had acted rudely to her friend, R. CC wrote that Miss Berube told her Mr. Divell had to leave immediately. CC says that Miss Berube also called her later that evening telling her and Mr. Divell not to return. CC says that she and Mr. Divell moved out the next day.
14. In contrast, Miss Berube says that she did not tell CC that Mr. Divell had to move out immediately. Rather, she says that she told CC on May 1, 2021 that Mr. Divell would need to stay in his camper during weekends to avoid contact with R. Miss Berube says that R needed to come to the house and Mr. Divell complained if people visited. Miss Berube says that Mr. Divell voluntarily moved out after this conversation. I make no findings about whether Miss Berube's weekend restrictions were a breach of the rental agreement because Mr. Divell seeks no remedy for those restrictions.
15. Based on CC's statement and Miss Berube's submissions, I accept that there was a personal conflict between Mr. Divell and R. However, I find that this is consistent with both Mr. Divell's submission that Miss Berube asked him to move out and Miss Berube's submission that she tried to keep them away from each other.
16. Miss Berube also says that she asked Mr. Divell to stay away on weekends because he had allegedly already agreed to move out in April 2021. Mr. Divell says he had

discussed moving out with Miss Berube in April 2021 but he did not do so. Miss Berube does not explain why she only asked Mr. Divell to leave on weekends rather than leave completely if the rental agreement had ended in April 2021 as she says. In the absence of an explanation, I find it more likely that the rental agreement had not ended in April 2021.

17. Miss Berube also says that she is an experienced landlord and she knows that she cannot force Mr. Divell to leave without notice. Miss Berube says that she told CC that she "...will serve her a 30 day notice." Based on the context, I infer that Miss Berube meant that she would deliver a written 30-day notice to move out in the future. There is no evidence or submissions showing that Miss Berube delivered a written move out notice.
18. Mr. Divell denies that a 30-day move out notice was discussed. Further, as discussed above, CC's statement says that Miss Berube asked Mr. Divell to immediately leave on May 1, 2021, not at a future date. Without further evidence, I find both parties' conflicting submissions about whether an alleged 30-day move out notice was discussed to be equally likely.
19. In considering the above evidence and submissions, I find Mr. Divell's submissions that Miss Berube forced him to move out without notice to be plausible. However, I also find Miss Berube's submissions that Mr. Divell voluntarily moved out in response to her weekend restrictions to be equally plausible. On balance, I find both Mr. Divell's and Miss Berube's versions of events to be equally likely. Though Mr. Divell has provided a supportive witness statement from CC, I find that CC is likely interested in the result of this dispute based on her spousal relationship to Mr. Divell. In the circumstances, I find I am left with an evidentiary tie about whether Miss Berube forced Mr. Divell to move out without notice or whether he left voluntarily. Since Mr. Divell bears the burden of proof as the applicant, I am unable to conclude his version is more likely than Miss Berube's.
20. Based on the above, I find that Mr. Divell's claim that Miss Berube breached the rental agreement is unproven and I dismiss it.

Does Miss Berube owe Mr. Divell a rent refund?

21. Mr. Divell also claims a \$300 rent refund. However, Mr. Divell has not explained how he calculated this amount. Based on Mr. Divell's claim that Miss Berube asked him to leave on May 1, 2021, I infer that Mr. Divell is requesting a refund of unused, prepaid rent for May 2021. However, as stated above, Mr. Divell's monthly rent is \$400, not \$300, and Mr. Divell does not explain this discrepancy. Further, Mr. Divell has not provided any evidence or submissions showing that he paid any rent for May 2021 before he moved out.
22. CC's statement says that she had paid \$300 rent to Miss Berube on May 1, 2021 for her rental contract. So, Mr. Divell's \$300 rent refund claim may be referring to CC's May 1, 2021 rent payment. However, as discussed above, CC's rental agreement is not at issue in this dispute so her alleged rent payment is not relevant.
23. For the above reasons, I find that Mr. Divell has not proved that Miss Berube received any unearned rent payments from him. So, I dismiss his claim for a rent refund.

CRT fees and dispute-related expenses

24. 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. Since Mr. Divell was not successful, I dismiss his claim for CRT fees. Miss Berube did not pay CRT fees and is not claiming reimbursement of dispute-related expenses.

ORDER

25. I dismiss Mr. Divell's claims and this dispute.

Richard McAndrew, Tribunal Member