



Civil Resolution Tribunal

Date Issued: September 21, 2022

File: SC-2021-009409

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hill v. Biggs*, 2022 BCCRT 1040

BETWEEN:

JUDITH HILL

APPLICANT

AND:

JULIAN BIGGS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a dispute between prospective roommates. The applicant, Judith Hill, agreed to rent a room from the respondent, Julian Biggs, with a move-in date of November 1, 2021.

2. As detailed below, the applicant says the respondent failed to have the house professionally cleaned. It is undisputed that the applicant ultimately did not move into the house. The applicant says the respondent first agreed and then refused to return the \$750 she paid him for November's rent. She claims \$750 in reimbursement from the respondent.
3. The respondent says he never agreed to have the house professionally cleaned. He argues, in essence, that the applicant is not entitled to any reimbursement since she terminated the parties' agreement days after the move-in date, leaving him without a roommate. The respondent also says that the applicant owed him a \$375 deposit, which he never received. The applicant says the respondent never informed her that he required a deposit. The respondent did not file a counterclaim.
4. The applicant is represented by a friend in this dispute. The respondent is 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 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.
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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue

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.
9. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes like this one. So, I find the RTA does not apply and that this is a contractual roommate dispute within the CRT's small claims jurisdiction.
10. Under CRT rule 1.11(a), the parties agreed that communications relating to facilitated settlement discussions held during the case management stage of this dispute could be disclosed to me. The respondent referred to these discussions in his written argument. Given the parties' agreement to disclose these discussions, I have considered and referred to them in my reasons below.

ISSUE

11. The issue in this dispute is whether the applicant is entitled to reimbursement of her paid \$750 for November's rent.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
13. In or around October 2021, the applicant contacted the respondent in response to a Facebook Marketplace listing for a room rental in a house. Neither party provided a copy of the advertisement.
14. It is undisputed that the parties had no written contract. Based on the parties’ submissions, and the lack of emails and text messages between the parties in evidence, I infer the majority of the parties’ discussions were over the phone.
15. There is one relevant text message in evidence from October 23, 2021 which, based on the text message, I infer was sent by the respondent to the applicant’s friend. In this text message, the respondent confirmed he had received the applicant’s \$750 payment for the first month’s rent starting November 1, 2021.
16. The respondent does not deny that he received \$750 from the applicant on October 23, 2021 for November’s rent. What is in dispute is whether the respondent verbally agreed to have the house professionally cleaned before the applicant moved in, which the respondent denies. While a verbal agreement may constitute a contract, it may be more difficult to prove.
17. It is undisputed that the parties had an agreement that the applicant would pay \$750 for monthly rent, starting November 1, 2021. The applicant says, in essence, that the parties’ agreement was conditional on the respondent having the house professionally cleaned before she moved in. The applicant says the respondent verbally agreed to have the house professionally cleaned but does not say when this agreement was made. However, based on her submissions, I infer she says the respondent agreed to the professional cleaning before he received the \$750 payment on October 23, 2021.

18. The applicant says there were 2 reasons why the respondent agreed to have the house professionally cleaned. First, because she had agreed to rent the room “sight unseen” since she did not have transportation or mobility assistance to be able to view the house before the move-in date. Second, because the house had previously been occupied by an elderly person and was, according to the applicant, “25 years soiled”.
19. The applicant says that after the respondent received her \$750 payment on October 23, 2021, he said he could not find anyone to clean the house. She further says that the respondent told her that he would not clean it and that he preferred that she not “take it”. She says that the respondent first said he would return the \$750 to her but then refused to repay her.
20. The respondent says he never agreed to have the house professionally cleaned since he is not the house’s owner or landlord. He says, and the applicant does not dispute, that he received the keys to move into the house on October 25, 2021 and the applicant refused to come and see it unless it was professionally cleaned. Given the applicant’s refusal to see the house, the respondent says she could not have known what condition it was in. He says that 2 days after the November 1, 2021 move-in date, the applicant decided not to move in, leaving him without a roommate.
21. The respondent further says that he made offers to repay the applicant half of the \$750 rent payment and up to \$500, but she refused those offers. The applicant says the respondent’s settlement offers are admissions of error and that she requires repayment in full.
22. On balance, I find the parties’ respective positions about what the agreement’s terms were are both equally likely. As noted, the applicant has the burden of proof. I find it unproven that the respondent agreed to have the house professionally cleaned before the applicant moved in. So, I find the parties’ agreement was not conditional on the house being professionally cleaned.

23. I further find that the evidence fails to establish on a balance of probabilities that the respondent told the applicant not to move in or that he agreed to repay her in full. With respect to the respondent's settlement offers, contrary to the applicant's submission, settlement offers are not admissions of liability. Since it is undisputed that the applicant did not accept the respondent's offers, there is no binding agreement for repayment to be enforced.
24. Based on the above, I dismiss the applicant's \$750 reimbursement claim for November's rent. I accept the respondent's statement that he was left without a roommate for November. I find the parties' rental agreement had an implied term that each party would give the other reasonable notice before terminating their agreement. Based on the parties' submissions, I find it more likely than not that the applicant refused to move into the house sometime between October 23, 2021 and November 3, 2021 and terminated the parties' agreement. I find this was not sufficient time for the respondent to find a new roommate for the month of November. As a result, I find the applicant owed the November rent under the agreement and so she is not entitled to its return.
25. While the respondent says the applicant owes him \$375 for a deposit, I make no findings about this since he did not file a counterclaim.
26. 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 the applicant was unsuccessful with her claims, I find she is not entitled to reimbursement of her paid CRT fees. The respondent did not pay any CRT fees and neither party claimed any dispute-related expenses, so I order no reimbursement.

ORDER

27. I dismiss the applicant's claims and this dispute.

Nav Shukla, Tribunal Member