Civil Resolution Tribunal

Date Issued: December 2, 2022

File: SC-2022-001853

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Longley v. Mae*, 2022 BCCRT 1304

B E T W E E N :

DEBORAH LONGLEY

APPLICANT

A N D :

KATRINA MAE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Sherelle Goodwin

INTRODUCTION

1. This is a roommate dispute.

2. The applicant, Deborah Longley, rented a room in a shared house in Victoria from the respondent, Katrina Mae. The applicant says the respondent incorrectly returned only half her deposit and claims the unpaid $206.50.

3. The applicant also says the respondent breached the parties' agreement by giving insufficient notice to move out and by harassing the applicant. The applicant claims $2,750 in wages she says she lost because she had nowhere to live in Victoria.

4. The respondent says she complied with the parties' agreement and owes the applicant nothing.

5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. 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.

7. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as those decisions are within the jurisdiction of the Residential Tenancy Branch (RTB). However, the RTB refuses jurisdiction over roommate disputes, which I find is the case here. For that reason, I find this dispute falls within the CRT's small claims jurisdiction.

8. 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.

9. 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.

10. 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.

ISSUE

11. The issue in this dispute is whether the respondent breached the parties' tenancy agreement and, if so, what damages is the applicant entitled to, if any?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one the applicant must prove her claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that which is relevant to explain my decision.

13. The applicant provided a copy of the parties' rental agreement, dated December 31, 2021. The agreement requires the applicant to pay $825 per month in rent and a security deposit of $412.50. The security deposit will be returned if the applicant causes no damage and pays all her rent. Finally, the agreement says either party can end the agreement with one month's notice given on the last day of the month.

14. It is undisputed that the applicant moved into the shared house on December 31, 2021 and paid the respondent the $412.50 security deposit.

15. On January 1, 2022, the respondent texted the applicant that she could only stay for the duration of the month. The respondent says the applicant asked for more time and the parties verbally agreed to be flexible about how long the respondent could live at the shared house. As the applicant does not dispute the respondent's statement or address it in any way, I accept that the parties agreed the applicant could continue to live at the shared house beyond January 31, 2022.

16. It is undisputed the parties had an altercation on February 25, 2022, while the applicant was still living at the shared house. The applicant provided WhatsApp messages from the respondent on that date, showing the respondent gave the applicant the option to pay half a month's rent and stay for 2 more weeks or leave at the end of February 2022, and lose her deposit.

17. Based on the respondent's submitted messages between the parties, I find they came to an agreement on February 26, 2022. The messages show the respondent offered the applicant to stay until March 4, 2022 and the parties would "split the cost" of the deposit, which I infer means the respondent would refund the applicant $206.50. The applicant agreed to stay and move out on March 3 or 4, 2022, and that the parties would split the deposit.

18. I find the parties' February 26, 2022 agreement replaced the 30-day notice period and deposit refund terms set out in the December 31, 2021 tenancy agreement. So, even if the respondent failed to give 30-days' notice to end the tenancy as the applicant argues, I find the applicant agreed to that shortened notice period on February 26, 2022.

19. The applicant says she only agreed to the February 26, 2022 agreement on the condition that the respondent stop harassing her for the duration of the applicant's stay. That term is not included in the parties' messages, even though the applicant specifically messaged the respondent that that she would consider the agreement and talk to friends before she actually messaged the respondent, agreeing to the terms later that day. I find that, if the parties wanted the agreement to include a term about the respondent's behaviour, they would likely have included it in their February 26, 2022 messages, which they did not do. So, I find it unlikely that the parties' agreement included a term about the respondent's behaviour.

20. Even if the agreement had included such a term, I do not find the respondent breached that term with her March 1, 2022 message, as the applicant claims. In the March 1, 2022 message submitted by the applicant, the respondent wrote that she wanted to renegotiate the parties' agreement. The respondent wrote that she did not

want to give the applicant 4 days' rent at no cost after all, that she was not sure what the renegotiation would look like, and that she was processing her thoughts. In response, the applicant said the respondent was showing bad faith and pointed out that the parties had an agreement.

21. The parties' later messages contain no mention of any further negotiations or new agreements. Although I agree with the applicant that the respondent's March 1, 2022 message shows she was reconsidering the February 26, 2022 agreement, I do not find the respondent breached the parties' agreement. Further, I find the applicant did not accept the respondent's desire to renegotiate as an anticipatory breach of the agreement, as the applicant specifically reminded the respondent of the parties' agreement.

22. I also find the respondent's March 1, 2022 message was not an initiation of more conflict, or harassment, as the applicant alleges. It included no insults, threats, or accusations. Rather, I find the March 1, 2022 message was the respondent's expression of dissatisfaction with the parties' February 26, 2022 agreement. So, even if the parties' agreement had included a term about the respondent's expected behaviour, I find the March 1, 2022 message was not sufficient to breach any such term.

23. It is undisputed, and the parties' messages to each other show, that the applicant removed her belongings from the house on March 4, 2022 and the respondent returned $206.50 to the applicant on March 7, 2022. So, I find both parties complied with the terms of their February 26, 2022 agreement. In other words, I find the respondent is not required to return to the applicant the remaining $206.50 of the deposit, as that was not what the parties agreed to.

24. As I find there was no breach of the parties' February 26, 2022 agreement, I find the applicant is not entitled to any damages, including her claim for lost wages for the month of March, 2022.

25. Even if I had found that the respondent breached the parties' agreement about notice, I would not have allowed the applicant's claim for lost wages. This is because the applicant has not provided any evidence that she lost wages as a result of moving out of the respondent's house. Although the applicant says she had nowhere else to stay, or live, in Victoria, she has provided no supporting evidence such as results of rental vacancy searches or rejected applications for other accommodations. Further, the applicant admits she did not look for another room in a shared house, even though she agreed on February 26, 2022 that she would move out of the house by March 4, 2022.

26. On balance, I find the applicant is not entitled to any remedies as I find the respondent did not breach the parties' agreement.

27. 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. As the applicant was unsuccessful in her dispute, I find she is not entitled to reimbursement of her paid CRT fees. As the successful party, the respondent paid no CRT fees and claimed no dispute-related expenses.

ORDER

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

Sherelle Goodwin, Tribunal Member