Civil Resolution Tribunal

Date Issued: May 8, 2024

File: SC-2023-006021

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lagassa v. Kitchen*, 2024 BCCRT 438

B E T W E E N :

DESIREE NOEMI LAGASSA and MICHAEL KENNETH POTTS

APPLICANTS

A N D :

AMANDA KITCHEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The respondent, Amanda Kitchen, rented a 2-bedroom suite in a home and needed a roommate for two months – April and May 2023. The applicants, Desiree Noemi Lagassa and Michael Kenneth Potts, saw the respondent's Facebook Marketplace

post. After meeting the respondent, the applicants paid her a $750 security deposit and moved in in late March 2023. On April 12, 2023, the applicants told the respondent that they were moving out on April 30, 2023. The respondent did not return their $750 deposit. The applicants want the $750 deposit back. They say they did not have to give notice, or that 18 days' notice was sufficient. Alternatively, they say that the respondent made no effort to rent out the room for May and therefore failed to mitigate her damages. Ms. Lagassa represents the applicants.

2. The respondent says she chose the applicants because they wanted the room for two months, over others who only wanted it for one month. She says she is entitled to keep the deposit because the applicants did not pay May's rent and she was unable to find another roommate in time. The respondent is self-represented.

3. As I explain below, I find the respondent has not proved that the applicants breached the parties' agreement or that she experienced a loss, so I order her to refund the security deposit.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

5. 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. The parties in this dispute call into question each other's credibility, or whether they are telling the truth, about whether they had a fixed-term agreement. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, the parties have provided their recollections of what was discussed. I find it unlikely that cross-

examination would reveal any inconsistencies in any party's evidence. Further, neither party asks for an oral hearing, and the amount of money at stake ($750) is relatively small. For these reasons, I decided that the benefit of an oral hearing did not outweigh the efficiency of a hearing by written submissions.

6. 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 court.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Did the parties have a fixed-term agreement? If not, did the applicants give sufficient notice before moving out?

    b. If the applicants breached the agreement, what are the respondent's proven damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

10. The parties' preliminary discussions took place on Facebook. Ms. Lagassa reached out to the respondent and told her a bit about herself and Mr. Potts. The respondent reciprocated. The respondent said the rent for a couple was $1,550 per month and reminded Ms. Lagassa that the room was only available for April and May. Ms.

Lagassa confirmed that the applicants were looking for something short-term until they could find something more permanent.

11. The parties agreed to meet at the respondent's home, where they had more discussions about the rental. The parties reached an agreement and the applicants moved in in late March 2023. They paid a daily rate for March, a $750 security deposit, and $1,500 rent for April. The applicants admit this was an error and they should have paid $1,550.

12. On April 12, 2023, the applicants told the respondent that they had found a long-term home and would move out on April 30.

13. The parties undisputedly did not put their agreement in writing. Oral agreements are binding and enforceable, but their terms can be more difficult to prove. The applicants say the agreement was flexible and they understood that they could have the room for a minimum of one month with the option of staying two months. The respondent says she chose the applicants over other people because they wanted to stay two months.

14. Although the applicants bear the burden of proof, the respondent is the party alleging that certain facts entitle her to keep the security deposit, which is presumptively refundable. Specifically, the respondent alleges that the applicants breached the contract so she was entitled to keep the deposit to offset her damages. So, the respondent must prove the terms of the contract, a breach, and damages. I find she has not done so here.

15. The respondent says when the applicants told her that they would move out on April 30, she says she explained that two weeks "was not sufficient notice according to the regulations." In her texts, she asserted that the applicants were required by law to give one month's notice. I find that if the parties had agreed on a fixed term of two months as the respondent alleges, the respondent would have said so in her texts, and would have asserted that the applicants had already agreed to pay May's rent, instead of asserting that the law required one month's notice. I find the respondent's

conduct does not support that the parties agreed on a two-month term. Instead, I find it supports the conclusion that the parties did not have a "meeting of the minds" about the agreement's term. In other words, they agreed the applicants would stay at least for April, but did not agree on whether the applicants were required to stay for May, or when they had to give notice that they did not want the room for May.

16. In certain circumstances, contractual terms may be implied. Implied terms are terms that the parties did not expressly discuss or write down. The CRT has implied a reasonable notice period of one clear month in co-tenant or roommate agreements (see e.g., *Agyemang v. Paul*, 2023 BCCRT 352). One clear month means giving notice, for example, by the end of January to move out by the end of February. However, one clear month would not be appropriate here because that would mean that if the applicants did not want to stay for May, they were required to give notice by March 31, before the monthly agreement even began. Instead, I find the 18 days' notice that the applicants provided was sufficient notice in the circumstances of a very short-term rental arrangement. I find the respondent is not entitled to keep any of the security deposit as damages for unpaid rent.

17. The respondent alleges other reasons she was entitled to keep the deposit. She says that the applicants damaged linens and kitchen items, that she incurred NSF fees for May's rent, and that she incurred a $250 expense for changing locks. However, she provided no photos of the alleged damage, and no receipts or invoices supporting any of the expenses. There is also no dispute that the applicants returned the key, so I find any lock changing expense was unwarranted and therefore not recoverable as damages. Finally, the respondent says that she was able to find a roommate for "the rest of May," but she does not say how much rent this roommate paid, so it is not clear to what extent she mitigated her damages.

18. For these reasons, I find the respondent has not proven a contract breach or any damages, so she must refund the security deposit. As noted, the applicants concede that the agreed rent was $1,550 and they only paid $1,500 for April, so they ask for $700 back. I order the respondent to pay the applicants $700.

19. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on the $700 from May 1, 2023, to the date of this decision. This equals $35.54.

20. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicants were successful, so I find they are entitled to reimbursement of $125 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

21. Within 21 days of the date of this order, I order the respondent to pay the applicants a total of $860.54, broken down as follows:

    a. $700 in debt,

    b. $35.54 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees and $X for dispute-related expenses.

22. The applicants are entitled to post-judgment interest, as applicable.

23. This is a validated decision and order. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member