Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zaichanka et al v. Al-Khalili et al*, 2019 BCCRT 999

B E T W E E N :

PHILIP ZAICHANKA and NOEMIE GIRARD

APPLICANTS

A N D :

SAMA AL-KHALILI and MATTEO PETRONCELLI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kathleen Mell

INTRODUCTION

1. This dispute is between parties who shared accommodations in a rental house. The applicants, Philip Zaichanka and Noemie Girard, say that the respondents, Sama Al-Khalili and Matteo Petroncelli, abandoned the lease and refused to pay rent. The applicants say the respondents owe them $1,100.00 in unpaid rent, $1,175.89 for

bills, and $550.00 as reimbursement of the applicants' damage deposit, for a total of $2,275.89. The applicants are representing themselves.

2. The respondents say they gave proper notice that they were moving out of the shared accommodations and they tried to find other tenants to take over the lease. They say that the parties agreed that if they could not find other tenants that they (Sama-Al-Khalili and Matteo Petroncelli) would lose $550.00, which was their portion of the damage deposit. They argue they did lose this to the landlord and that they are not responsible for any other losses or expenses. The respondents say that these other issues should be taken up with the landlord. As for outstanding bills, the respondents say that the amount the applicants are claiming is too high. The respondents are representing themselves.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

5. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA: a) order a party to do or stop doing something, b) order a party to pay money, c) order any other terms or conditions the tribunal considers appropriate.

7. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* (RTA) does not apply to this dispute because the RTB refuses jurisdiction over "roommate disputes", such as this one. I find the dispute is within the tribunal's small claims jurisdiction, as set out in section 118 of the CRTA.

ISSUE

8. The issue in this dispute is whether the respondents owe the applicants money for rent, bills, and other expenses the applicants paid after the respondents moved out of their shared accommodations.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicants must prove their claim. They bear the burden of proof on a balance of probabilities.

10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

11. The parties entered into a tenancy agreement on November 9, 2018 to share the top floor of a house beginning on December 1, 2018. All parties signed the lease. The parties were also responsible for paying for utilities.

12. The respondents say they gave the landlord and the applicants 30 days' notice on February 1, 2019 that they would move out of their room on March 1, 2019. The applicants say that the respondents abandoned the lease and refused to pay rent. They agree that the respondents gave 30 days' verbal notice that they were leaving

on March 1, 2019, but say they were supposed to find replacement tenants in that time and they did not do so.

13. The respondents say that all the parties agreed, including the property manager, that the respondents would try to find tenants to take over the lease, but, if another tenant was not found, the landlord would keep their share of the damage deposit, or $550.00. The respondents did not provide evidence of this agreement, although it is clear from the evidence that the applicants, respondents, and the property manager were trying to find replacement tenants throughout February 2019. Also, tenants were found at the end of February 2019 which the property manager thought were suitable, but the landlord refused to allow them to take over the lease.

14. The respondents moved out of the house on March 1, 2019. At that point the applicants, with the property manager's consent, put the respondents' portion of the damage deposit, as well as the applicants' portion, toward the rent for March 2019. The applicants paid the remaining $1,100.00 for the March 2019 rent.

15. The applicants say that this is why they are asking for the respondents to reimburse them for their half of the damage deposit, or $550.00. They say that when the respondents left the premises they had to use their own part of the damage deposit as "collateral" for rent because they ran out of money and could not afford to pay for the entire house by themselves.

16. The applicants rely on the terms of the lease with the landlord to support their position that the respondents are responsible to them for their half of the March 2019 rent. It is their position that the respondents' February 1, 2019 verbal notice was not adequate because it was not in writing as required by the landlord's lease agreement. They also say that the respondents were not entitled to move out because this was a fixed term lease. Therefore, they argue that the respondents shared an ongoing responsibility to pay the rent for March 2019. The applicants moved out on April 1, 2019, although it is unclear how they were released from the lease with the landlord.

17. The problem with the applicants' position is that the lease with the landlord sets out the obligations between the tenants and the landlord, not between the parties. There is no written agreement between the applicants and the respondents about what would happen if any one of them decided to move out before the joint lease expired.

18. Because there is no signed agreement between the parties, and the lease is not enforceable between the parties, the applicants must prove that the respondents entered into a verbal agreement with them to pay rent after they gave notice that they were moving out. While enforceable, verbal agreements are harder to prove than written ones.

19. The text messages between the parties all through February 2019 do not show that the parties agreed that the respondents would be responsible for the March 2019 rent if they could not find replacement tenants. In fact, the texts between the respondents and the property manager show that the respondents were questioning what would happen themselves. The property manager told them if the rent was not paid on March 1, 2019 he would evict all of the parties within ten days.

20. On February 20, 2019, the applicants asked the respondents what they were going to do if a replacement tenant was not found in time. The respondents replied that they had to move as Mr. Petroncelli had a new job in another city. At that point the applicants told the respondents that under the lease all parties were responsible for giving notice and, since the applicants did not do so, the respondents had full responsibility for finding a replacement tenant. The applicants said if a replacement tenant was not found then the respondents had to think of some way to come up with their portion of the March 2019 rent.

21. It is unclear the exact date, but the respondents texted the applicants in March 2019 that they were not obligated to the respondents and that if they were still in the city they would have fought the landlord for not accepting suitable tenants as a replacement for them. At no point did the respondents accept that there was an agreement between the parties that if one of them moved out they would be

responsible to the others for ongoing rent. Therefore, I find that there was not an implied agreement between the parties that the respondents would pay the applicants half of the March rent if other tenants were not found to take over the lease.

22. Based on all the evidence, I find that the applicants have not proved on a balance of probabilities that there was an agreement that the respondents had the responsibility to pay $1,100.00 for half of the March 2019 rent. The evidence shows that the respondents signed a lease with the landlord and they were trying to fulfill the terms of that lease. The evidence does not show that there was a separate agreement, verbal or otherwise, between the parties that the applicants would be responsible for ongoing rent after they moved out on March 1, 2019. Therefore, I find that the applicants are not entitled to the $1,100.00 claimed as reimbursement for half of the March 2019 rent.

23. The applicants also requested $1,175.89 for their lost damage deposit of $550.00 and bills of $625.89. As the applicants' damage deposit went toward the March 2019 rent, and I have already decided that the respondents are not responsible for that month's rent, the applicants are not entitled to be reimbursed for the $550.00 damage deposit.

24. This leaves the applicants' request for $625.89 in outstanding bills. It is unclear how the applicants came up with this amount. The applicants have not provided the specifics of the outstanding bills or details of the amount owing. A March 31, 2019 text states that the respondents owe $182.00 each or $364.00 in total. There is an email dated April 7, 2019 where the respondents agree that they owe $346.00 to cover the utilities, but that the other bills were for a period after they moved out. In their Dispute Response the respondents say that they have copies of the bills showing their share is $541.89.

25. Based on the information available, I find that the applicants have not proved that they are entitled to more than the $541.89 that the respondents admit they owe for outstanding bills.

26. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicants are entitled to pre-judgement interest on the $541.89 owing for bills from March 1, 2019, the day they moved out, to the date of this decision. This equals $5.07.

27. Under section 49 of the CRTA, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Because the applicants were partially successful in their claim, I find that they are entitled to have half their $125.00 tribunal fees reimbursed.

ORDERS

28. Within 30 days of this decision, I order the respondents to pay the applicants a total of $609.46, broken down as follows:

    a. $541.89 for outstanding bills as of March 1, 2019, and

    b. $5.07 in pre-judgement interest under the *Court Order Interest Act* (COIA), and

    c. $62.50 reimbursement for their tribunal fees.

29. The applicants are also entitled to post-judgement interest under the COIA, as applicable. The applicants remaining claims are dismissed.

30. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

31. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kathleen Mell, Tribunal Member