



# Civil Resolution Tribunal

Date Issued: March 31, 2020

File: SC-2019-010562

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ilic v. Nhan*, 2020 BCCRT 362

**B E T W E E N :**

DANILO ILIC and KATARINA ILIC

**APPLICANTS**

**A N D :**

SOPHIE NHAN and NICOLAS LABYT

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Rama Sood

### **INTRODUCTION**

1. This is a dispute between roommates. The applicants, Danilo Ilic and Katarina Ilic, subleased a furnished bedroom with an ensuite bathroom from the respondents, Sophie Nhan and Nicolas Labyt. They seek a refund of their \$750 security deposit plus \$160 for a pair of shoes they accidentally left behind when they moved out.

2. The respondents say the applicants damaged a kitchen chair and the mattress in their bedroom. They also say that the applicants did not pay their share of the utilities. They say these costs should be deducted from the security deposit. They also say they were prepared to return the shoes, but the applicants refused to accept them.
3. All parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
8. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch (RTB). However, the

*Residential Tenancy Act* does not apply to this dispute because the RTB refuses jurisdiction over 'roommate disputes', such as this one. For that reason, I find the dispute is within the tribunal's small claims jurisdiction as set out in section 118 of the CRTA.

9. During the tribunal decision process, the respondents requested that their names be anonymized for privacy reasons. They say that they do a lot of work through social networks and do not want their personal and professional lives affected by the decision. The tribunal's decisions are generally made public and parties are identified because its proceedings are considered open proceedings. This is known as the 'open court principle', which exists to ensure transparency and integrity in the justice system. The tribunal anonymizes decisions if a vulnerable party, such as a child, is involved, or if particularly sensitive information, such as medical issues, are disclosed, but parties' names are not otherwise removed. I have considered the respondents' request and I find in the circumstances there is no reasonable basis to use initials in place of full names in this case.

## **ISSUE**

10. The issue in this dispute is whether the respondents are required to reimburse the security deposit and the cost of the applicants' shoes.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicants' position is correct.
12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
13. The respondents were tenants in a strata unit with 2 bedrooms and 2 bathrooms. On August 17, 2019 the parties signed a sublease for the applicants to rent a

furnished bedroom and ensuite bathroom (premises) on a month to month basis starting on September 1, 2019. The kitchen, living room, and bathroom were common areas and shared by the parties.

14. The relevant lease terms are:

- a. The rent was \$1,500 per month, due on the first day of each month.
- b. Utilities were not included and were payable at the end of each month.
- c. The applicants agreed to pay a security deposit of \$750 which would be returned at the end of the lease if everything was in order and there were no damages. General wear and tear was “expected”. I infer that the parties meant that general wear and tear was excluded from damages.
- d. Once the term ended, the applicants agreed the furniture and decorations would be in as good a condition as they were at the beginning of the term. The applicants agreed the respondents could use the security deposit to repair any damage done to the property.

15. The applicants paid the \$750 security deposit before moving in. They also inspected the premises with the respondents and completed a Condition Inspection Report (Report). The Report was 4 pages and contained separate sections for premises’ condition when moving in and also when moving out. In the Report, the parties noted that 2 bulbs were missing and that a chain on the fridge door was broken. The Report does not mention the mattress in the applicants’ bedroom or the kitchen chair.

16. The applicants moved out on December 1, 2019. Before leaving, the parties completed the move out sections of the Report. The respondents wrote on the Report that there was a 1 cm by 0.5 cm tear on the mattress and that the paint on a kitchen chair was uneven.

### ***The mattress***

17. The parties agree there is a 1 cm by 0.5 cm tear in the mattress. The applicants say the mattress was already torn when they moved in. They say they did not mention the tear in the Report because it was so small. The applicants also say the size of the tear did not increase because they used a mattress protector after moving in.
18. There is no evidence that the applicants brought the tear to the respondents' attention when they moved in. I find that the applicants I find the applicants are responsible for the mattress tear because they had the opportunity to note the tear in the Report and chose not to do so. As a result, I find the applicants are responsible for the mattress tear.
19. The respondents have provided inconsistent evidence about the cost of the mattress damage. In their Dispute Response, the respondents say the strata lot's owner wanted the mattress replaced. The respondents did not provide a statement from the owner. By contrast, in their submissions, the respondents sought \$3.28 for a dollar store sewing kit. I infer it is for mending the mattress. Based on photos in evidence, I find the tear was quite small and did not affect the mattress' use. I find the respondents are entitled to deduct \$3.28 from the security deposit for the sewing kit.

### ***The kitchen chair***

20. The kitchen chair was wooden and painted white. The respondents say it was part of a set of 5 kitchen chairs from Ikea. The respondents say that the paint on the seat of the chair was uneven after the applicants moved the chair from the kitchen into their bedroom temporarily. The respondents provided an image from Ikea's website that showed the chair cost \$35. They seek to deduct \$35 from the security deposit to replace the chair.
21. The respondents admit the following:
  - a. They did not know specifically which chair the applicants borrowed.

- b. The chair was in a common space in the strata unit and was used by all parties.
  - c. They could not tell who damaged the chair or how it was damaged.
22. Although the parties provided photos of the chair, they did not provide photos of the other chairs in the set to use as a comparison. The chair's paint appeared to be intact with no chips, scratches or gouges. However, the paint was thicker along the edges of the seat and brush strokes were visible on the center of the seat.
23. I find the kitchen chair was not damaged. Even if the unevenness in the paint was caused by the applicants, I find that was reasonable wear and tear and excluded under the terms of the sublease. I find the respondents cannot deduct anything from the security deposit for the chair.

### ***The shoes***

24. The applicants seek \$160 for the cost of replacing shoes they inadvertently left in the premises when they moved out. Based on the parties' evidence I find the following events occurred:
- a. On December 1, 2019 the respondents informed the applicants that a shoe box had been left behind and the applicants told the respondents they did not want the box and it could be thrown out.
  - b. On December 6, 2019 the respondents discovered the applicants' shoes were in the shoe box. The respondents gave the shoe box containing the shoes to their friend to dispose of it.
  - c. On December 9, 2019 the applicants realized they had left a pair of shoes in the premises when they moved out and they asked the respondents to return the shoes. The respondents informed the applicants they had disposed of the shoes.

- d. The respondents retrieved the shoes from their friend after discovering that he still had them and offered to return the shoes to the applicants. The applicants refused to accept the shoes because they say they did not know if they are still wearable and in the same condition as on the day they left them behind.
25. The respondents provided a photo of the shoes. Since the applicants have not disputed shoes' condition as shown in the photo, I find the shoes are in the same condition as when the applicants moved out.
  26. A legal relationship of bailment was created when the applicants left the shoes in the premises. The law of bailment is about the obligations on one party to safeguard another party's possessions. A gratuitous bailment occurs where the bailee (in this case, the respondents) provides care for items for no net benefit. A gratuitous bailee is liable only for gross negligence if belongings are damaged or lost. I find there is no evidence the shoes were damaged while in the respondents' care. I find the applicants acted unreasonably when they refused to accept the respondents offer to return the shoes. For this reason I dismiss the applicants' claim for \$160.

### ***The utilities***

27. The parties agree the applicants still owe \$117.06 to the respondents for their share of the utilities. The applicants say the respondents could deduct it from the security deposit. Based on the parties' submissions, I order that \$117.06 be deducted from the security deposit.
28. After adjusting for the sewing kit and the utilities, I find the respondents must pay the applicants \$629.66. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled to pre-judgment interest on the amount of \$629.66 from December 1, 2019, which is the date the applicants were entitled to the refund, to the date of this decision. This equals \$4.10.
29. 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. I see no reason in this case not to follow that general rule. I find the applicants were substantially successful and are entitled to reimbursement of \$125 in tribunal fees.

## **ORDERS**

30. Within 30 days of the date of this order, I order the respondents to pay the applicants a total of \$758.76, broken down as follows:

- a. \$629.66 in debt as reimbursement for the security deposit,
- b. \$4.10 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 for tribunal fees.

31. I dismiss the applicants' remaining claims.

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

33. 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.



34. 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 passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Rama Sood, Tribunal Member