



Civil Resolution Tribunal

Date Issued: July 30, 2020

File: SC-2020-001062

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Milko v. Cao*, 2020 BCCRT 846

BETWEEN:

TAWNEE MILKO

APPLICANT

AND:

JING CAO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a “roommate” tenancy dispute. The applicant, Tawnee Milko, rented a shared space from the respondent, Jing Cao. Ms. Milko requests a refund of her \$750 security deposit. Ms. Milko also requests an order preventing Ms. Cao from making false claims against her, using abusive language against her, damaging her reputation or contacting her.

2. Ms. Cao denies these claims. Ms. Cao says that Ms. Milko is not entitled to a refund of the security deposit because Ms. Milko damaged the property. Ms. Cao denies making false claims or offensive comments to Ms. Milko.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

7. 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.
8. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, section 4 of the *Residential Tenancy Act* (RTA) says it does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation, such as this one. It is undisputed that Ms. Cao owned the living accommodations that she rented to Ms. Milko and they shared bathroom and kitchen facilities. So, I find the RTA does not apply and this dispute falls within the CRT's small claims jurisdiction set out in 118 of the CRTA.

Request for an order preventing communications

9. Ms. Milko requests an order preventing Ms. Cao from making false claims against her, using abusive language against her, damaging her reputation or contacting her.
10. Ordering someone to do something, or to stop doing something, is known as "injunctive relief". This includes an order preventing Ms. Cao from making communications to or about Ms. Milko. Injunctive relief is outside the CRT's small claims jurisdiction, except where permitted by section 118 of the CRTA. There are no relevant CRTA provisions here that would permit me to grant the injunctive relief sought by Ms. Milko. So, I decline to grant Ms. Milko's request for an order regarding Ms. Cao's communications with her.

ISSUE

11. The issue in this dispute is whether Ms. Cao must refund the security deposit? If so, how much must she refund?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Ms. Milko must prove their case on the balance of probabilities. Although Ms. Cao has not filed a counterclaim, Ms. Cao says she is entitled to keep the security deposit because Ms. Milko damaged the property. Ms. Cao has the burden of proving that Ms. Milko damaged the property.
13. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

Refund of security deposit

14. It is undisputed that the parties signed a rental agreement on December 9, 2019 (contract). The contract appears to be prepared on an RTB form for use with the RTA. Although the RTA does not apply to this dispute, the contract references the RTA extensively. I will apply the contract as written, including terms of the contract that specifically incorporate RTA provisions into the contract.
15. The contract has the following terms:
 - Sections 2 and 3 say Ms. Milko will rent the property from January 8, 2020 to July 8, 2020 for \$750 per month.
 - Section 4(B)(1) says Ms. Cao will refund the security deposit or commence a dispute against Ms. Milko within 15 days of the tenancy ending.
 - Both section 6(1) and page 6 of the contract say Ms. Cao and Ms. Milko must inspect the property together and complete a written condition reports at the beginning and the end of the tenancy.
 - Section 10(2)(a) says Ms. Milko is responsible for damage to the property other than reasonable wear and tear.
16. It is undisputed that Ms. Milko paid Ms. Cao a \$750 security deposit in December 2019. It is also undisputed that Ms. Cao and Ms. Milko did not inspect the property

together or complete written condition reports at the beginning or the end of the tenancy as required by section 6(1) and page 6 of the contract.

17. Section 6(3) of the contract says that Ms. Cao loses her right to claim the security deposit if she does not comply with section 24 and 36 of the RTA. Section 24 and section 36 of the RTA say that a landlord must complete the inspections and prepare condition reports on move-in and move-out.
18. As stated above, the RTA does not apply to this dispute. However, the parties have specifically incorporated section 24 and section 36 of the RTA by reference into section 6(3) of the contract. So, I find that section 24 and section 36 of the RTA apply to the contract.
19. Since Ms. Cao did not perform the condition inspections or prepare the condition inspection reports as required by the contract, I find that Ms. Cao has lost her right to claim the security deposit in accordance with section 6(3) of the contract. So, without a contractual right to the security deposit, I find that Ms. Cao must refund the entire \$750 security deposit.
20. In addition, even if the contract did not end Ms. Cao's right to keep the security deposit, I would still order Ms. Cao to refund the deposit because she has not proved the extent of Ms. Milko's alleged property damage. As stated above, Ms. Cao has the burden of proving she is entitled to keep the security deposit in compensation for Ms. Milko's alleged property damage. However, Ms. Cao has not provided any repair estimates or invoices to prove the extent of her damages. So, I find that Ms. Cao has failed to satisfy her burden of proving the amount of her losses.
21. For the above reasons, I find that Ms. Cao must refund the \$750 deposit to Ms. Milko.
22. The *Court Order Interest Act* applies to the CRT. Ms. Milko is entitled to pre-judgement interest on the \$750 security deposit from January 29, 2020, the move-out date, to the date of this decision. This equals \$6.43.

23. 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 Ms. Milko is only partially successful in this dispute, I find Ms. Milko is entitled to reimbursement of one-half of the CRT fees, being \$62.50. Neither party claimed dispute-related expenses so none are awarded.

ORDERS

24. Within 30 days of the date of this order, I order Ms. Cao to pay Ms. Milko a total of \$818.93, broken down as follows:

- a. \$750 as refund of the security deposit,
- b. \$6.43 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

25. Ms. Milko is entitled to post-judgment interest, as applicable.

26. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

27. 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. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member