



# Civil Resolution Tribunal

Date Issued: July 30, 2020

File: SC-2019-008923

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Berlin v. Diaz*, 2020 BCCRT 847

BETWEEN:

JAKE BERLIN

**APPLICANT**

AND:

Marbiluz Reyes Diaz and JIHYUN PARK

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant Jake Berlin says that the respondents Marbiluz Reyes Diaz and Jihyun Park charged him rent and a damage deposit, but then refused to allow him

to use his rented room in a reasonable way. Mr. Berlin also says the respondents failed to refund his full damage deposit when he moved out.

3. Mr. Berlin claims a total of \$5,000 for rent, a damage deposit and related property damage, moving expenses and other damages.
4. Ms. Diaz says she was a roommate. Ms. Diaz says she did not receive money from Mr. Berlin. Ms. Diaz says she did not remove Mr. Berlin from the property nor damage any of his belongings. Ms. Diaz asks that the dispute be dismissed against her.
5. Ms. Park agrees that she received a \$390 damage deposit from Mr. Berlin. Ms. Park says she returned \$160 to Mr. Berlin, after deducting \$100 for damage to a common refrigerator basket and \$130 for 5 days of rent given that Mr. Berlin moved out on November 5, 2019.
6. Ms. Park says that Mr. Berlin was permitted reasonable use of his room. However, Mr. Berlin's behavior became incompatible with the needs of others living in the home and the police were involved. Ms. Park denies improperly withholding rent or damage deposit monies from Mr. Berlin, damaging his property or otherwise causing him loss. Ms. Park asks that Mr. Berlin's dispute be dismissed.
7. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

8. 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.

9. The CRT 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.
10. 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.
11. 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.
12. Generally, the CRT 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. As I discuss further below, the parties shared a floor in the landlord's house. Each of them had their own bedroom, and other bedrooms were rented by non-parties. The roommates shared a kitchen and common area.
13. For these reasons, I find the dispute is within the CRT's small claims jurisdiction as set out in section 118 of the CRTA.

### ***Discrimination Allegations***

14. In submissions, Mr. Berlin writes that he experienced "extreme discrimination" in the household and that his "basic human rights" were "abused and suppressed".
15. Mr. Berlin argues that Ms. Park and Ms. Diaz' actions towards him were somehow illegal, implying that his rights under the BC *Human Rights Code* or the *Charter* were violated.

16. The CRTA section 11(1)(b) says the CRT may refuse to resolve a claim or the dispute where it involves a constitutional question or the application of the *Human Rights Code*. The CRT does not have jurisdiction over human rights complaints, and so I make no findings about any such complaints. However, as Mr. Berlin did not request any specific remedies related to the *Human Rights Code* or the *Charter* and did not provide any medical opinion evidence proving a disability, I find that I have jurisdiction to decide his dispute under the CRT's small claims jurisdiction.

### ***Ms. Diaz***

17. There is a preliminary issue about whether Ms. Diaz is a properly named respondent. Based on the statements of Ms. Diaz and Ms. Park, I find that Ms. Diaz was a roommate at the property. Based on the documentary evidence, I find that Ms. Diaz did not receive any rent or deposits from Mr. Berlin. I find that Mr. Berlin has not met the burden on him to prove that Ms. Diaz wrongly caused any other losses to him. For these reasons, I dismiss the claims against Ms. Diaz.

## **ISSUES**

18. The remaining issues in this dispute are:

- a. whether Ms. Park breached the parties' roommate agreement,
- b. whether Mr. Berlin is entitled to a refund of \$780 for October 2019 rent,
- c. whether Mr. Berlin is entitled to a refund of his \$390 damage deposit, and
- d. whether Mr. Berlin is entitled to his other claimed damages after moving out of the shared household.

## **EVIDENCE AND ANALYSIS**

19. In this civil claim, the applicant Mr. Berlin bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

20. Mr. Berlin's \$5,000 claim in damages or debt is broken down as:

- a. \$780 for October 2019 rent,
- b. a \$390 damage deposit,
- c. return of his storage locker and bicycle keys,
- d. \$250 for the cost of storage he has had to pay, when if he had the keys he would have stored these items in his home at no additional cost,
- e. \$250 for moving expenses,
- f. \$1,500 to replace the work laptop Mr. Berlin says was destroyed during his dispute with the respondents,
- g. \$1,000 in compensation for loss of work time and time in development of new online business,
- h. \$400 to replace vitamins, medication and supplements that Mr. Berlin says he can no longer access after being forcibly removed from the rental or an order for their return, and
- i. \$430 food costs for eating out because he does not have access to a kitchen.

21. I now turn to the factual background.

22. Ms. Park rented an upper-level suite in a house in Vancouver. With the homeowner's permission, Ms. Park then sublet two bedrooms within the suite to other people. Ms. Park sublet one of the rooms to Ms. Diaz and her spouse AS.

23. Both Ms. Park and Mr. Berlin agree that they had a roommate agreement starting October 1, 2019 for Mr. Berlin to live in the other bedrooms. The agreement was on a month-to-month basis and required Mr. Berlin to pay Ms. Park a \$390 damage deposit and \$780 per month in rent.

24. Ms. Park and her spouse SN lived in a third bedroom within the suite. The roommates shared a common kitchen and living area and some of them shared a bathroom. I find it was an implied term of the roommate agreement that Mr. Berlin would maintain reasonable levels of cleanliness, noise and access to the shared facilities to permit the various occupants to live communally.
25. Based on statements from Ms. Park, Ms. Diaz, SN and AS, I find that Mr. Berlin became a disruptive roommate in many respects, including by being noisy, using the bathroom for over an hour at a time even when others were waiting, using or moving personal items belonging to other residents without permission, walking around common areas in only his underwear, and failing to clean up in the bathroom by flushing the toilet or cleaning his bodily secretions from the sink basin. Based on his own admission in the text messages, I also find that Mr. Berlin did laundry using the shared washer/dryer outside of the set laundry hours.
26. Video footage filed in evidence also demonstrates that Mr. Berlin played his guitar loudly. Based on the videos, I also find that, on at least one occasion, Mr. Berlin sang loud, confrontational words directed at his roommates, including singing they were “not citizens”, that he “didn’t like it” and that they should “stop assaulting” him. However, I find there is no evidence that Ms. Park or the other roommates assaulted Mr. Berlin.
27. Based on the text messages filed in evidence, I find that when Mr. Berlin refused to change his behavior, his other roommates decided to ask him to leave by the end of October. Based on the text messages and witness statements, I find that when Ms. Park asked Mr. Berlin to move out he shouted at some of the roommates, challenged some of them to fight him, and sent confrontational messages both in a group chat and to Ms. Park’s cell phone.
28. On October 20, 2019, prompted by what I find was Mr. Berlin’s noisy and agitated behavior, the roommates involved the Vancouver Police Department. The police report filed in evidence states that on October 20, 2019, a roommate at the property was acting aggressively and challenging others to fight. Vancouver Police

constables attended and removed Mr. Berlin. Based on the police report, I find that Mr. Berlin was removed with the agreement of the landlord and roommates. The police report records that a constable instructed Mr. Berlin not to return home that night, but to contact one of the other roommates the next day to arrange to pick up his belongings.

29. I find that Mr. Berlin did not return to the property or seek to retrieve his belongings until November 2, 2019 when he texted Ms. Park requesting access to pick up his property. Mr. Berlin wrote in the November 2, 2019 text, in part, that he wanted to get his belongings and that "I have a new place to put them. I want to vacate your space so someone else can occupy it." I find that Mr. Berlin decided to voluntarily leave the roommate arrangement.
30. Mr. Berlin then moved out on November 5, 2019, with police escorts present while he packed up. SN provided a statement that he observed Mr. Berlin pack belongings from the kitchen, including all vitamins and health supplements from the fridge. SN also observed that Mr. Berlin located his keys and returned keys to the front and back house doors.
31. After Mr. Berlin moved his belongings, I find that the roommates did much of the usual move out cleaning on his behalf, rather than insisting that he do it. I say this because Mr. Berlin did not provide photographs showing a clean bedroom after move out. SN gave a statement that he ended up doing some of the cleaning, and that Mr. Berlin's part of the fridge was left dirty, with some dust in his room.
32. Although Mr. Berlin says that he left behind several personal belongings, based on the statements filed in evidence, I find that he was given a reasonable opportunity to pick up his property, and that he did so.
33. After he picked up his items, the parties agree that Mr. Berlin requested his laundry detergent. Ms. Park found the detergent and arranged for it, along with a few items of addressed mail, to be left in a bag outside for Mr. Berlin to pick up. He then did so.

34. Text messages also show that Mr. Berlin himself was unsure if he had picked up all his vitamins, medicines and supplements. He asked Ms. Park to check the fridge, and she did so but no vitamins, medicines or supplements were present. Based on these texts, I find that Mr. Berlin removed his vitamins, supplements and medication on November 5.
35. It is undisputed that the shelf in the common refrigerator reserved for Mr. Berlin's use was damaged during his stay. Ms. Park says that she deducted \$100 from his damage deposit for the repair of this drawer.
36. On November 8, 2019, Ms. Park sent Mr. Berlin \$160 electronically, being his \$390 damage deposit, less \$100 for the refrigerator drawer and \$130 in prorated rent for 5 days in November 2019.

### ***October 2019 Rent***

37. I dismiss Mr. Berlin's claim for \$780 in rent he paid for October 2019.
38. I say this because Mr. Berlin used the room during most of October 2019. Then he left the premises by agreement, once the police were involved. He made no effort to return until early November. That is, Mr. Berlin did not attempt to use the room between October 20 and November 2, by choice.
39. I have also found that Mr. Berlin also moved out of the room voluntarily, as indicated by his November 2, 2019 text.
40. I have considered Mr. Berlin's submissions that he was not allowed reasonable use of the room he was rented. However, I find that the text messages and statements from his roommates prove that he was allowed permissive use of the common areas, including lengthy bathroom access in shared premises. Although Mr. Berlin says he was not permitted to make any noise, I find that the house rules were only to keep noise to reasonable levels.
41. Mr. Berlin submits that limitations on his time in the bathroom were discriminatory. Mr. Berlin says that he is disabled and suggests that long baths or showers are



helpful for pain management. Mr. Berlin did not provide medical opinion evidence of a disability requiring extra bathing time, and it outside the CRT's jurisdiction to decide human rights complaints. As well, the witness statements prove that Mr. Berlin was generally permitted lengthy bathroom time, sometimes so that there was no hot water left when his roommates needed to shower.

42. I find that Mr. Berlin's roommates requested some reasonable quiet hours, that he clean up after himself and do laundry between 9 am and 9 pm on weekdays or 10 am-9pm on weekends, a rule followed by the remaining roommates. I find that, contrary to Mr. Berlin's submissions, the expectations set out by Ms. Park and the other roommates were reasonable. I find that Mr. Berlin has not met the burden upon him to prove that Ms. Park breached the roommate agreement.

### ***Damage Deposit***

43. I have found that Mr. Berlin was refunded \$160 on November 8, 2019. Mr. Berlin says he should be refunded the whole \$390 damage deposit he paid.
44. Mr. Berlin agrees that his assigned refrigerator drawer was damaged when he opened the refrigerator door and it fell out. Ms. Park deducted \$100 from the deposit, for this damage. However, Mr. Berlin submits that the damage was not his fault, because the drawer had been improperly closed or placed by someone else. The damaged drawer was the one reserved for Mr. Berlin's use only. Mr. Berlin says he repaired the drawer with glue. I find that a repair or replacement to make the drawer as it was pre-damage is reasonable. Given that the drawer was damaged when Mr. Berlin was using the fridge, I find that the \$100 deduction for its repair or replacement was reasonable.
45. As well, because Mr. Berlin did not move out until November 5, 2019, I find that the \$130 charge for prorated rent of \$26 per day for 5 days was also an appropriate deduction.
46. I dismiss Mr. Berlin's claim for any further refund of his damage deposit.

### ***Return of Storage Locker and Bicycle Keys***

47. Mr. Berlin did not prove that his storage locker and bicycle keys were withheld by Ms. Park or Ms. Diaz.
48. The evidence is that Mr. Berlin picked up his belongings on November 5, 2019, including his key ring.
49. I therefore dismiss this claim.

### ***Cost of Storage***

50. Mr. Berlin did not prove that he was required to pay for storage because he could not access his room between October 20 and November 5. Instead, the evidence shows that he left the household, and then only sought to move out in early November.
51. I dismiss Mr. Berlin's claim for storage costs.

### ***Moving Expenses***

52. I dismiss Mr. Berlin's claim for moving expenses, because he has not proven any wrongful conduct by the respondents that would make them responsible for these expenses.

### ***Replacement of Work Laptop***

53. Mr. Berlin's own evidence is that the Vancouver Police constables either threw his laptop down the stairs or otherwise damaged it when they were accompanying him to leave the premises.
54. There is no evidence that the respondents damaged Mr. Berlin's laptop. For this reason, and because the Vancouver Police constables are not parties to this dispute, I dismiss Mr. Berlin's claim for \$1,500 to replace his work laptop.

### ***Compensation for Loss Work Time/Lost Business Development***

55. I dismiss Mr. Berlin's claim for damages for time lost from work or business development because he has not proven any wrongful conduct by the respondents that prevented him from working or developing his business. In any event, Mr. Berlin did not prove his claimed damages, such as with financial records.

### ***Replacement of Vitamins, Medicine and Supplements***

56. Above, I found that Mr. Berlin removed his vitamins, medicine and supplements from the household on November 5. I therefore dismiss his claim for their replacement.

### ***Food Costs for Eating Out***

57. I dismiss Mr. Berlin's claim for damages for the costs of eating out, because he has not proven any wrongful conduct by the respondents that caused him to incur those expenses.

### ***Tribunal Fees and Dispute-Related Expenses***

58. 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. Because Mr. Berlin's claims were unsuccessful, I do not order the respondents to pay any dispute-related expenses. Mr. Berlin did not pay tribunal fees.

59. Ms. Diaz claims \$1,780 in dispute-related expenses for hospital records, a legal consultation, and \$80 for mail forwarding services. I dismiss these claims for dispute-related expenses, as explained below.

60. I find that Ms. Diaz' own hospital records were not relevant to the issues in dispute.

61. Under section 20(1) of the CRTA, parties must generally represent themselves, unless permission is granted for representation in the dispute. Given that Ms. Diaz was self-represented, I do not order payment of legal fees she chose to incur.

62. The \$80 mail forwarding services were not an expense required to participate in this dispute. That is, the expense appears to be mail forwarding services Ms. Diaz set up once she moved to a new address. I therefore dismiss this claim for dispute-related expenses.

63. The respondents did not pay tribunal fees and so I make no order in this regard.

## **ORDERS**

64. I dismiss Mr. Berlin's claims and this dispute.

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Julie K. Gibson, Tribunal Member