



# Civil Resolution Tribunal

Date Issued: July 31, 2020

File: SC-2020-002082

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Law v. Mahal*, 2020 BCCRT 852

BETWEEN:

ANITA LAW

**APPLICANT**

AND:

MANJINDER MAHAL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This is a dispute between former roommates. The applicant, Anita Law, rented rooms in a home owned by the respondent, Manjinder Mahal. Ms. Law says that when she moved out of the home, Mr. Mahal refused to return her \$575 damage

deposit or \$575 pet deposit. She asks for an order that Mr. Mahal pay her \$1,150 for these deposits. Mr. Mahal admits that he did not return the deposits, but says that he had expenses of \$2,738.98 due to damage and unpaid rent. On this basis, Mr. Mahal denies that Ms. Law is entitled to the return of her deposits.

2. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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.
7. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, section 4(c) of the *Residential Tenancy Act* (RTA) says that the RTA does not apply to

accommodations in which a tenant shares bathroom or kitchen facilities with the owner of the accommodation. So, the RTB refuses jurisdiction over this type of roommate dispute. As Ms. Law shared kitchen facilities with Mr. Mahal and the other occupants of the home, I find that the RTA does not apply. I am satisfied that this dispute is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.

8. Mr. Mahal requested that the decision be anonymized for reasons unrelated to this dispute. Although the CRTA requires that the CRT publish all final decisions, the CRT will not publicly identify the parties if there are extraordinary circumstances. The CRT's *Access to Information and Privacy Policy* sets out the factors to consider in a request for anonymization, including the circumstances of the case, the nature of the evidence provided, the potential impact of disclosure on a person, and how anonymization would impact the CRT's goals of transparent decision-making processes and protection of personal information.
9. My decision does not require the discussion of medical information, information about people who are not parties to the dispute, or information about a vulnerable person, such as a minor. Although the parties provided a large volume of information in their submissions, I have determined that much of it is not relevant to the contractual matter that forms the basis of this dispute. In these circumstances, I find that Mr. Mahal has not established that the need for protection of personal information outweighs the goal of transparent CRT proceedings, and I decline to anonymize the published version of my decision.

## **ISSUE**

10. The issues in this dispute is whether Ms. Law is entitled to the return of \$1,150 she paid Mr. Mahal in security and pet deposits.

## EVIDENCE AND ANALYSIS

11. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided extensive evidence and detailed submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
12. The parties made submissions and provided evidence about how their relationship deteriorated over time and about other temporary occupants of the home. I find that these matters are not relevant to the issues before me. Therefore, I will confine my analysis to Ms. Law's possible entitlement to the return of the security and pet deposits.
13. Ms. Law rented partially furnished rooms in a home owned and recently renovated by Mr. Mahal. On January 2, 2019, the parties signed an agreement that required \$1,150 in monthly rent, plus \$575 for a security deposit and \$575 for a pet deposit related to Ms. Law's cat. There is no dispute that Ms. Law paid Mr. Mahal the full amount of both deposits.
14. The parties agree that Ms. Law moved into the home on March 9, 2019. During the time she lived at the home, the house was also occupied by Mr. Mahal and other individuals. Ms. Law had the use of a bedroom with an attached bathroom as well as another room used as an office. Ms. Law used a baby gate to attempt to prevent her cat from going into other areas of the home.
15. On September 15, 2019, Mr. Law gave written notice to Mr. Mahal that she would be moving out of the home effective October 15, 2019. This document stated that the parties had mutually agreed to this date. Although he may have agreed to the date of Ms. Law's departure, text messages between the parties show Mr. Mahal's position was that their agreement required her to pay rent until the end of October. Despite this, Ms. Law paid only \$575 rent on October 1<sup>st</sup>, and arranged to vacate the home by mid-month.

16. On October 14, 2019, the parties (accompanied by Ms. Law's friend) inspected the premises. On a handwritten summary of the inspection, Mr. Mahal noted:
- a. a strong odour of cat urine in the bedroom,
  - b. a strong odour (perhaps cat or urine) on the mattress topper and pillow,
  - c. several stains, marks, scuffed areas on bedroom and office walls,
  - d. buckling in 3 panels of flooring in the bedroom,
  - e. several scuffs and marks on the wallpaper around the staircase, and
  - f. odour and some staining on the carpet.
17. Mr. Mahal says that this damage, damage to the mattress topper, damage to a blind caused by one of Ms. Law's guests, and the unpaid half of the October rent caused him losses of \$2,738.98. On this basis, Mr. Mahal did not return either the security deposit or the pet deposit to Ms. Law. It appears that he started a proceeding with the RTB about these losses, but later withdrew it. Mr. Mahal did not make a counterclaim for the \$1,588.98 difference between the amount of the deposits and his alleged losses.
18. Ms. Law's position is that there was no odour, and that the damages identified by Mr. Mahal are "minor, incidental and nonexistent", and many of them are in common areas to which other people had access. She says that, as Mr. Mahal cannot prove that she caused any damage, she is entitled to the return of the entire \$1,150.
19. As noted, the parties' agreement provides for the payment of a security deposit and a pet deposit. The agreement also does not contemplate that Mr. Mahal's possible recovery would be limited to the amount paid for each deposit (i.e. his entitlement for pet-related damages would be limited to \$575 even if such damage exceeded that amount). I find that the damages are not restricted to a particular category and any proven damages may be deducted from the \$1,150 deposit amount.

20. The parties' agreement specifically states that Ms. Law is not responsible for "reasonable wear and tear", although she is responsible for damage "caused by the actions or neglect" of herself or her guests. Therefore, Ms. Law is only entitled to the return of the \$1,150 if there was no damage as contemplated by the agreement.

### ***The Blind***

21. There is no dispute that one of Ms. Law's guests spilled red wine on a white window blind. Mr. Mahal obtained a preliminary quote of \$350 to replace it. In her September 15, 2019 letter that gave Mr. Mahal notice of her departure, Ms. Law "I agree to pay a [sic] \$350 of my damage deposit for the repair of the living room curtain due to a wine stain, contingent upon the fact that it is the sum which accurately reflects the invoice for the repair. This payment must be accompanied by an invoice".

22. Mr. Mahal says that the style of blind was no longer available, and had to be special ordered so that it would match the other blinds in the room. The total cost of the blind, installation, and taxes was \$500, as documented on a receipt from the company that provided and installed the blind.

23. Despite her previous offer to pay for the replacement of the blind, Ms. Law suggests that she should not have to pay the \$500 as she says left the blind in "satisfactory condition". She provided a statement from a friend who said that, after cleaning, "it was difficult to see that anything had happened at all". Ms. Law says that Mr. Mahal must prove that he "tried to minimize the damage and associated costs", and provided information about the availability of lower cost blinds, instructions for self-installation of blinds, and other ways in which Mr. Mahal could have mitigated his damages.

24. Photos of the blind Ms. Law provided in evidence appear to show dark marks on the lower part of the blind. It is not clear whether these marks are due to staining or light passing through the blind. I note Mr. Mahal's submission that the layers of fabric in the blind separated after the spill such that it did not block light in the same way.

25. While I do not doubt that Ms. Law and her friends attempted to clean the blind, I find that the evidence supports the conclusion that it was not left in the same condition as it was prior to the spill. I find this amounts to damage as contemplated by the parties' agreement rather than reasonable wear and tear.
26. Even though there are similar blinds available at a lower cost, I find that it was reasonable for Mr. Mahal replace the blind with the same style and quality of blind that was present previously. I also find that it was reasonable for Mr. Mahal to have the blind professionally installed. I find that the preliminary quote of \$350 was not binding on the parties, and that Ms. Law is responsible for the \$500 cost shown on the invoice.

### ***Mattress Topper***

27. Mr. Mahal claims that Ms. Law damaged a foam mattress topper that he had to replace at a cost of \$128.04. Photographs of the topper submitted by the parties show stains and areas of missing foam, and a short video shows Ms. Law's cat lying directly on the topper. Mr. Mahal suggests that the stains were caused by Ms. Law's ill cat, and that Ms. Law tore pieces off the foam to remove areas stained by the cat's fluids. Ms. Law says that the topper was old and stained when she moved in. For the reasons discussed below, I find that the cause of the stains is not determinative.
28. Whether or not the topper was stained when Ms. Law arrived at the home, she admits that she damaged it when she used a vacuum to clean it. Photographs show 2 sections of foam missing from the corner of the mattress topper. These missing areas appear to be deep gouges, and more than the "slight indentations" Ms. Law describes. No matter the age of the mattress topper, I find that Ms. Law caused damage to it that was more than wear and tear. Under the parties' agreement, I find she is responsible for its replacement.

29. Mr. Mahal provided a December 9, 2019 receipt for a \$128.04 queen-size foam mattress topper. I find that he is entitled to deduct this amount from Ms. Law's deposits.

### ***Carpet Cleaning***

30. Mr. Mahal says he spent \$157.50 on carpet cleaning in the areas where Ms. Law's cat liked to lie. This includes some areas where the cat was permitted and some areas where it was not.

31. Prior to Ms. Law moving in, she and Mr. Mahal discussed his concern about having a cat in the home. As shown in a December 31, 2018 text message exchange, Mr. Mahal did not want the cat to have access to his entire home, and also did not want the cat to be "stuck in the bedroom all day". Ms. Law suggested that they use a baby gate to ensure that the cat "would only have access to the corridor, [her] room and the office".

32. The evidence shows that the baby gate was not always in place, firmly or at all. Photographs show the gate leaning in doorways and lying flat on the hallway carpet. It is not clear who took the gate down or whether the cat was able to get around the gate when it was leaning in doorways. In any event, photographs and witness statements confirm that the cat was seen on the carpeted stairs and adjoining hallway (which were not part of the permitted area) on several occasions. There is no dispute that the cat also used the carpeted hallway between Ms. Law's bedroom and the office area.

33. The cleaner's receipt says, "carpet cleaning hallway and stairs – clean & treat for cat urine". The parties disagree about whether there was a smell of urine on the carpet. Photographs of the carpet show no obvious stains, although it is difficult to assess these images due to the carpet's colour and pattern.

34. No matter how it happened, I accept that Ms. Law's cat went to portions of the home where it was not permitted. The receipt shows that just the areas used by the cat were cleaned, not the entire home. Whether there was urine on the carpet or



not, I find that it was reasonable for Mr. Mahal to clean the carpets after the cat left the house. This is particularly so as the evidence indicates at least 1 of Mr. Mahal's family members is allergic to cats. I find that Mr. Mahal is entitled to deduct the \$157.50 cost of the carpet cleaning from Ms. Law's deposit.

### ***Laminate Flooring***

35. Mr. Mahal says that there was an area of damaged flooring in Ms. Law's bedroom that measured about 20 inches by 20 inches. Mr. Mahal describes the flooring as being "buckled" in this area, and suggests that the damage was caused by cat urine.
36. Ms. Law denies that the flooring issue was caused by cat urine, but acknowledges that the issue was there. According to Ms. Law, she first noticed the "raised edges" on the area of laminate flooring on October 3, 2019. She suggests that this "wear and tear" could have been the result of moisture from the nearby bathroom. Ms. Law says that, as other people occasionally used this bathroom, they could have been responsible. Mr. Mahal says that other occupants always used other bathrooms.
37. The parties appear to agree that the problem relates to moisture on the laminate. Photographs in evidence show that 3 strips of laminate have discoloured edges that do not appear to be flush with the other flooring. Whatever the source of the moisture, I find that the resulting changes to the flooring amount to damage as opposed to wear and tear.
38. While it may be true that other people used Ms. Law's bathroom on occasion, the evidence suggests that the bathroom was part of the area Ms. Law rented for her own use. I find that it is more likely than not that that she (or circumstances within her control) caused the damage to the floor. Under the parties' agreement, I find she is responsible for the repairs. Therefore, Mr. Mahal is entitled to deduct the \$425 he spent on labour and materials to fix the damaged flooring from Ms. Law's deposit.

### ***Paint Damage***

39. Mr. Mahal says that the walls in the bedroom and office were newly painted before Ms. Law arrived, but they showed damage after her furniture was removed. Photographs provided by the parties show a variety of scratches, scrapes and smudges on different-coloured walls. According to Mr. Mahal, the marks match up with the height of the furniture Ms. Law placed in the rooms. He provided a receipt showing that he paid a handyman \$100 for paint “touch-up”.
40. As discussed above, the parties’ agreement states that Ms. Law is not responsible for wear and tear. Based on the evidence before me, I find that the marks on the wall are minor in nature. I also note that the handyman’s receipt does not indicate that any patching or repair work was done on the walls. I find that paint touch-up is consistent with wear and tear rather than damage. Under the parties’ agreement, I find Mr. Mahal is not entitled to make a deduction for the paint touch-up.

### ***Wallpaper Damage***

41. Mr. Mahal claims that Ms. Law or her movers damaged the wallpaper next to the staircase when she removed her bookcases from the home. He says he spent \$853.44 to replace the wallpaper, and provided a receipt to support this expense. Ms. Law denies that she caused any damage to the wallpaper.
42. Photographs provided by the parties show textured wallpaper installed on a curved wall on a staircase. The images are from the move-out inspection and do not establish the state of the wallpaper before that time. Several images show small scuff marks in the texture and a brown streak on one panel. Mr. Mahal says the brown colour on the streak is the same colour as Ms. Law’s bookcase.
43. The parties agree that the staircase is not in a part of the home where Ms. Law had exclusive access. Although Mr. Mahal says that the damage must have been caused by Ms. Law’s bookcase, I find this to be speculative. I find that the evidence before me does not establish that the marks were caused by Ms. Law as opposed

to other occupants or guests in the home. I find that Mr. Mahal is not entitled to deduct any expenses related to the wallpaper from Ms. Law's deposit.

44. In summary, I find that Ms. Law is responsible for the \$500 cost of the blind, \$128.04 for the mattress topper, \$157.50 for carpet cleaning, and \$425 for flooring repair. I find that Ms. Law is not responsible for the expenses related to wallpaper replacement and painting.
45. The items for which Ms. Law is responsible total \$1,210.54. This is higher than the \$1,150 deposit amount. I find that Ms. Law is not entitled to the return of any portion of her deposit and I dismiss her claim. Given this determination and the fact that Mr. Mahal did not file a counterclaim, I find that I do not need to consider his arguments about unpaid rent.
46. 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. As Ms. Law was not successful, she is not entitled to reimbursement of her CRT fees.
47. Ms. Law is also not entitled to reimbursement of the \$140.75 in dispute-related expenses she claimed. Even if she had been successful, I would not have awarded her this amount, as the evidence only establishes that she paid \$15.75 for a land title search. The other claimed expenses were not explained or proven.

## **ORDER**

48. I dismiss Ms. Law's claims and this dispute.

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Lynn Scrivener, Tribunal Member