



# Civil Resolution Tribunal

Date Issued: August 11, 2020

File: SC-2020-001758

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shah v. Slawski*, 2020 BCCRT 891

BETWEEN:

YOSHNICA SHAH

**APPLICANT**

AND:

DARIUSZ SLAWSKI

**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, Yoshnika Shah, rented a room from the respondent, Dariusz Slawski. Ms. Shah says that Mr. Slawski harassed her, and that his behaviour forced her to move out of the home. She asks for an order that Mr. Slawski pay her \$3,000 for a deposit and meals. Mr. Slawski

denies that he harassed Ms. Shah or forced her out of his home, and denies that he owes her any money.

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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the CRT's process and that oral hearings are not necessarily required where credibility is in issue.
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). Although the *Residential Tenancy Act* (RTA) governs residential tenancies, the RTB refuses jurisdiction over roommate disputes. As this is a dispute between former roommates, I find that the RTA does not apply and that this claim is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.
8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
9. Ms. Shah asked that the CRT "red flag" Mr. Slawski and prevent him from renting rooms out in the future. I find that this request is akin to a restraining order, which is not within the CRT's jurisdiction under the CRTA. Therefore, I refuse to resolve this issue.
10. In her submissions, Ms. Shah made several comments to Mr. Slawski that I find were abusive and disrespectful. I would point out that, according to the CRT's Code of Conduct, all dispute participants are expected to communicate in a respectful manner.

## **ISSUE**

11. The issue in this dispute is whether Mr. Slawski must pay Ms. Shah \$3,000 for a reimbursement of a tenancy deposit and meals.

## **EVIDENCE AND ANALYSIS**

12. In a civil dispute, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their

respective positions. While I have considered all of this information, I will refer to only what is relevant to the issue before me and necessary to provide context to my decision.

13. It is undisputed that Ms. Shah responded to an advertisement about a room for rent in Mr. Slawski's home. The parties agreed that she would rent the room, although the details of the arrangement are not clear. Ms. Shah says that, after she signed the tenancy agreement, she determined that Mr. Slawski wanted a more personal relationship. According to Ms. Shah, Mr. Slawski asked her to prepare meals for him, and asked her to spend time with him instead of studying or working.
14. Ms. Shah says that, after she rejected his advances, Mr. Slawski started to harass her by placing dog waste near her room, banging on her door, and attempting to engage her in conversations and fights. Ms. Shah also claims that Mr. Slawski poisoned her dog and made offensive postings on her social media accounts. Ms. Shah says that Mr. Slawski's behaviour forced her to move out of the home. She asks for an order that Mr. Slawski pay her \$3,000 for her deposit and meals. Ms. Shah did not provide a specific breakdown of the amount claimed.
15. Mr. Slawski denies that he asked Ms. Shah to prepare meals for him, but states that she offered to do so in exchange for unspecified credits towards her rent. He denies that he harassed Ms. Shah in the way she described or at all. However, he says that Ms. Shah made threatening remarks to him, including threats to burn down the house and sue him. According to Mr. Slawski, Ms. Shah refused to take her dog out or clean up its waste when he asked her to do so, which resulted in damage to his floors. Mr. Slawski says that he never asked Ms. Shah to leave, but rather complied with her request to do so. According to Mr. Slawski, he returned \$600 in rent to Ms. Shah in the presence of a police officer. Mr. Slawski's position is that he does not owe Ms. Shah any money.
16. It is apparent that the parties have very different recollections and perceptions of their experience as roommates. I accept that they were not compatible as roommates, but this is not determinative of the issue before me.

17. The evidence before me is limited, particularly with respect to the details of the parties' arrangement and the timing of the events the parties describe. Although both parties refer to a signed agreement, neither party submitted it in evidence. It is not clear to me whether their agreement contemplated the payment of a deposit, what rent was to be paid, or what amounts Ms. Shah actually paid to Mr. Slawski under their agreement. It is also not clear whether the parties' agreement was for room only, or for room and board. The evidence also does not establish what notice requirements were in place for the ending of the arrangement. As noted above, the burden of proof is on Ms. Shah, as the applicant.
18. The evidence does include handwritten notes between the parties that appear to address a number of tenancy-related grievances and issues, including noise, dog waste, and other matters. This undated and unsigned document contains notes about a possible credit of rent money for meals, but the statement "No. Never!" appears immediately afterwards. Although the document may represent some of the parties' discussions, I find that it is not an agreement.
19. The parties both provided recordings of some of their interactions. I find that this evidence shows the strained relationship between the parties (primarily due to the allegations of dog waste inside the house), but does not provide information about the terms of the parties' agreement.
20. Based on the limited evidence before me, I find that Ms. Shah has not established her entitlements under their agreement. Similarly, I am unable to make a determination about whether either party breached the agreement.
21. As noted, Ms. Shah claims \$3,000 for a deposit and meals. Based on the evidence before me, I find that Ms. Shah has not proven that she paid a deposit to Mr. Slawski. Further, I find that Ms. Shah has not proven that she failed to receive agreed-upon credit for Mr. Slawski's meals, or that she did not receive meals to which she was entitled under any agreement.

22. Although not explicitly stated, Ms. Shah appears to be seeking damages related to her move out of Mr. Slawski's home. I find that she has also not proven that she incurred any expenses or damages as a result of the ending of the roommate arrangement.
23. While I accept that both parties found their interactions with the other to be unpleasant, I find that Ms. Shah has not met her burden of proving her entitlement to the \$3,000 she seeks. Accordingly, I dismiss her claims.
24. 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. Ms. Shah did not pay CRT fees as she obtained a fee waiver. Even if Ms. Shah had been successful, I would not make an order for what she described as \$100 in estimated dispute-related expenses as these expenses are not explained or supported by evidence.
25. Mr. Slawski made a claim for a dispute-related expense for a police report. He did not identify the cost of the report or provide it in evidence. As I find that Mr. Slawski has not proven this expense, I dismiss his claim for reimbursement.

## **ORDERS**

26. Mr. Slawski's claim for reimbursement of dispute-related expenses is dismissed.
27. I dismiss Ms. Shah's claims and this dispute.

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Lynn Scrivener, Tribunal Member