



# Civil Resolution Tribunal

Date Issued: September 3, 2020

File: SC-2020-003064

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shah v. Henderson*, 2020 BCCRT 985

BETWEEN:

YOSHNICA SHAH

**APPLICANT**

AND:

CHRISTOPHER HENDERSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The applicant Yoshnika Shah says her landlord, the respondent Christopher Henderson, harassed her and wrongly obtained free babysitting and pet sitting from her.

2. Ms. Shah claims \$4,500 in damages for Mr. Henderson's alleged harassing conduct and \$500 for "baby sitting, feeding his kids, pet sitting other tenants dog" (quote reproduced as written).
3. Mr. Henderson denies harassing or otherwise causing damage to Ms. Shah. Mr. Henderson says he communicated with Ms. Shah only as appropriate, including when she breached their tenancy agreement by being noisy during quiet hours and allowing her dog off leash in the yard.
4. Mr. Henderson agrees that his children sometimes spent time with Ms. Shah, at her request. However, once Ms. Shah's behavior became erratic, Mr. Henderson says he no longer allowed his children to visit with her. Mr. Henderson asks me to dismiss the dispute.
5. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the

circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

8. 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. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
9. 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.
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. The CRT generally does not take jurisdiction over residential tenancy disputes, as these are decided by the RTB. The RTB has exclusive jurisdiction over matters falling within the *Residential Tenancy Act* (RTA).
13. Section 4(c) of the RTA says it does not apply where the homeowner shares a kitchen or bath with the tenant. I find that this situation is not a 'roommate dispute', with the owner sharing a bathroom or kitchen with the tenant. I say this because the evidence is that the Hendersons live entirely upstairs and the tenants share common facilities downstairs. Therefore, I find I do not have jurisdiction over tenancy agreement issues between the parties.

14. In her Dispute Notice, Ms. Shah does not claim a refund for her damage deposit paid under the tenancy agreement with Mr. Henderson. However, in submissions Ms. Shah refers to Mr. Henderson failing to refund the damage deposit.
15. Because the damage deposit was paid between tenant and landlord, and not as part of a roommate arrangement where the bathroom or kitchen was shared with the owner, I find that the RTA governs any claim to the damage deposit and I refuse to resolve it.
16. Below, I address Ms. Shah's claim for damages against Mr. Henderson, outlined in her Dispute Notice, independent of their tenancy agreement.

## **ISSUE**

17. The issue in this dispute is whether Mr. Henderson is legally liable for alleged harassment of Ms. Shah or required her to provide babysitting or dog sitting services without payment, such that Ms. Shah is entitled to the claimed \$5,000 in damages.

## **EVIDENCE AND ANALYSIS**

18. As the applicant, Ms. Shah bears the burden of proof on a balance of probabilities in this civil claim. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

### ***Tort of Harassment***

19. I find that the substance of Ms. Shah's central \$4,500 damages claim is based on what is known in law as the tort of harassment. However, in *Total Credit Recovery v. Roach*, 2007 BCSC 530, a decision binding on me, Madam Justice Koenigsberg found that "the weight of authority in this Province is against the development of such a tort". I therefore find that there is currently no recognized cause of action in British Columbia for the tort of harassment: see the CRT Vice Chair's non-binding but applicable analysis in *Genaille v. Peters*, 2020 BCCRT 86, paragraphs 15-17.

20. Even if there was a recognized tort of harassment here, the case law indicates relevant criteria which I find are not established on the evidence before me. In *Mainland Sawmills Ltd. v IWA-Canada, Local 1-3567 Society*, 2006 BCSC, where the court assumed without deciding that the tort of harassment existed in British Columbia, and laid out these criteria:
- a. Outrageous conduct by the respondent,
  - b. Intention to cause the applicant emotional distress or reckless disregard,
  - c. The applicant suffered “severe or extreme emotional distress”, and
  - d. The respondent’s outrageous conduct was the actual and proximate cause of the distress.
21. I find that Ms. Shah has not proven that Mr. Henderson engaged in outrageous conduct, nor that she suffered “severe or extreme emotional distress” as a result. There is no medical documentation before me and no evidence that otherwise proves that Ms. Shah suffered such distress. As discussed below, even if a tort of harassment existed, I find that Ms. Shah has not proven the required elements.

### ***Background Facts and Analysis***

22. The parties agree that Mr. Henderson and his spouse rented a room to Ms. Shah in November 2019. The rental was for an anticipated 4-month term, ending March 25, 2020 when it would become month-to-month.
23. Based on the written tenancy agreement provided, I find that Ms. Shah agreed to pay rent by the 25<sup>th</sup> day of each month. If she failed to pay on time, Mr. Henderson and his spouse could end the tenancy. The agreement set out quiet hours between 10:00 pm and 7:00 am daily.
24. Ms. Shah agreed to ensure that her dog would not cause damage or disturb anyone at the property, or the Hendersons could end the tenancy.

25. I find that, during the tenancy, Ms. Shah's dog began digging holes in the yard. I find that, even after being asked by Mr. Henderson to keep her dog on leash to stop the digging, Ms. Shah sometimes allowed her dog off leash in the yard.
26. Based on signed statements from two other tenants who lived at the property while Ms. Shah lived there, I also find that Ms. Shah also played loud music and was otherwise noisy during quiet hours.
27. Based on the emails and other documentary evidence, I find that due to Ms. Shah's breach of the quiet hours and the pet rules, on January 25, 2020, Mr. Henderson gave Ms. Shah an eviction notice. That evening, Ms. Shah played music loudly after quiet hours. At 7:00 a.m. the next day, the Hendersons went to her door to ask her to turn off the music. Ms. Shah did not answer her door.
28. The Hendersons then called police to do a wellness check. The Hendersons provided the police a key to Ms. Shah's room, concerned for her safety due to her failure to respond. Ms. Shah became upset, asked the police officers to get out of her room. In the recording filed in evidence by Ms. Shah, loud music is playing and her dog barks repeatedly throughout.
29. After this incident, Ms. Shah moved out voluntarily.
30. I now turn to Ms. Shah's specific allegations against Mr. Henderson. Ms. Shah says that Mr. Henderson entered her room without permission, while she was a tenant. In support of this allegation, she says that one of Mr. Henderson's children, a 3-year old, told her that he had entered her room. I do not place any weight on this hearsay evidence from a very young child. Mr. Henderson denies entering Ms. Shah's room without permission. Based on the evidence, I find that Ms. Shah has not proven that Mr. Henderson entered her room without permission.
31. Ms. Shah also says Mr. Henderson hacked into and deleted her emails. I find that the evidence before does not prove this allegation. I have reviewed the emails sent to Ms. Shah by Mr. Henderson. I find their content consistent with his role as landlord.

32. Ms. Shah says that Mr. Henderson allowed police into her room, without her consent. I find that providing police a key to Ms. Shah's room for a wellness check in these circumstances is not wrongful.
33. Ms. Shah says Mr. Henderson would not allow her to pay her rent on time. Ms. Shah could have paid her rent by cheque or e-transfer. I find that Mr. Henderson did not obstruct her ability to do so. I dismiss this allegation.
34. Given these findings, I dismiss Ms. Shah's claim for \$4,500 for damages for harassment.
35. I turn to Ms. Shah's remaining claim for \$500 for babysitting and pet sitting that she says Mr. Henderson wrongly obtained from her for free.
36. Ms. Shah says Mr. Henderson left his children and another tenant's dog with her, effectively getting free pet and babysitting.
37. Mr. Henderson's spouse, C, provided a written statement that her children occasionally went downstairs to visit Ms. Shah, at Ms. Shah's invitation. C did not ask Ms. Shah to babysit and never left the home when her children were visiting Ms. Shah. I accept C's evidence that the time spent between Ms. Shah and her children was voluntary and constituted social visits rather than paid babysitting. I find that any food voluntarily offered by Ms. Shah to the children at those social visits does not create a claim for the food's cost.
38. I also find that Ms. Shah's claim that Mr. Henderson owes her for pet sitting another tenant's dog is not proven, in part because the dog's owner provided a written statement denying hiring Ms. Shah to pet sit. I dismiss Ms. Shah's claim for \$500 for babysitting, pet sitting and the cost of food eaten by the children.
39. 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. Henderson succeeded in this dispute but paid no tribunal fees and did not claim dispute-related expense, I make no order for them.

## **ORDER**

40. I refuse to resolve any claim to the damage deposit, under CRTA section 10.

41. I dismiss Ms. Shah's remaining claims and this dispute.

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Julie K. Gibson, Tribunal Member