



# Civil Resolution Tribunal

Date Issued: October 20, 2020

Files: SC-2020-003130 & SC-2020-003527

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ahmed v. Mohammadzadeh*, 2020 BCCRT 1184

BETWEEN:

ASMA AHMED

**APPLICANT**

AND:

MAHDI MOHAMMADZADEH

**RESPONDENT**

AND:

ASMA AHMED

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. These are disputes between former roommates. In January 2020, the applicant in SC-2020-003130 (and respondent in SC-2020-003527), Asma Ahmed, rented a room to the respondent in SC-2020-003130 (and applicant in SC-2020-003527), Mahdi Mohammadzadeh. In SC-2020-003130, Ms. Ahmed says that the agreement had a fixed term, and Mr. Mohammadzadeh breached it when he left the home in April of 2020. She asks for an order that Mr. Mohammadzadeh pay her \$750 for lost rent for May of 2020. Mr. Mohammadzadeh says he terminated the roommate agreement properly, and denies that he owes Ms. Ahmed any money.
2. In SC-2020-003527, Mr. Mohammadzadeh says that when he left the home on April 15, 2020, Ms. Ahmed refused to return his \$350 security deposit and \$350 in unused rent. He asks for an order that Ms. Ahmed pay him \$700 for these items and return \$3,288.20 he paid for leak-related damages. Ms. Ahmed denies that Mr. Mohammadzadeh is entitled to any money from her.
3. The 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, 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.

6. 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 these are disputes between former roommates, I find that the RTA does not apply and that these claims are within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.
7. 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.
8. 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.

## **ISSUES**

9. The issues in these disputes are:
  - a. Whether Mr. Mohammadzadeh terminated the roommate agreement properly,
  - b. Whether Mr. Mohammadzadeh is responsible for the \$750 in damages that Ms. Ahmed claims,
  - c. Whether Mr. Mohammadzadeh is entitled to the return of \$350 in rent,
  - d. Whether Mr. Mohammadzadeh is entitled to the return of his \$350 deposit, and
  - e. Whether Mr. Mohammadzadeh is entitled to the return of the \$3,288.20 he paid Ms. Ahmed for leak-related damage.

## EVIDENCE AND ANALYSIS

10. In civil disputes like these, an applicant (whether in a claim or counterclaim) bears the burden of proof on a balance of probabilities. Both parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
11. The parties signed an agreement on January 1, 2020 for Mr. Mohammadzadeh to rent a bedroom with attached bathroom in Ms. Ahmed's home. The agreement had a fixed term between January 1 and June 30, 2020 and required payment of \$750 per month in rent. Mr. Mohammadzadeh also paid a \$350 damage deposit. The parties used the pre-printed form for use under the RTA but, as discussed above, the RTA did not apply to their agreement. I find that the terms set out on the form were the basis for the parties' agreement.
12. Shortly after he moved into the home, Mr. Mohammadzadeh installed a jet spray device on the toilet in his bathroom. On January 17, 2020, there was a leak from the bathroom that was determined to have come from the jet spray device. Mr. Mohammadzadeh paid Ms. Ahmed \$3,288.28 for the cost of repairing leak-related damages.
13. Issues arose about finances, noise, cooking smells, electricity use, and matters related to a daycare operation. The parties had discussions about the possibility that Mr. Mohammadzadeh would leave the home. Ms. Ahmed says (and Mr. Mohammadzadeh does not deny) that she told Mr. Mohammadzadeh that he could leave before the end of the agreement so long as she could find another tenant. Text messages in evidence show discussions about various appointments to show the room to prospective tenants in late March of 2020. However, Ms. Ahmed was not successful in finding a new tenant.
14. The parties continued their discussions about their roommate arrangement in a series of April 3, 2020 emails. In the first message, Mr. Mohammadzadeh stated that he was providing "written one month notice based on our lease agreement" and would leave

the home on May 1, 2020. In her reply, Ms. Ahmed stated that she did not accept the “eviction notice” as they had a fixed-term agreement and she would have difficulty finding a new tenant during the pandemic. Mr. Mohammadzadeh responded by referencing a previous verbal notice, and stated that he considered that he had given notice to end the tenancy on March 15.

15. Mr. Mohammadzadeh paid his full rent for the month of April 2020, but left the home on April 15.

### ***SC-2020-003130 – Termination of Agreement and Damages***

16. Ms. Ahmed was unable to find a new tenant right away and says that she suffered financial losses as a result of Mr. Mohammadzadeh breaking their agreement early. Initially, Ms. Ahmed asked for compensation for \$1,500 in lost rent for both May and June of 2020. However, as she found a replacement tenant in June, she revised her claim and now asks for \$750 representing the lost rent for May of 2020. Mr. Mohammadzadeh says that he ended the agreement properly, and denies that he owes Ms. Ahmed any money.
17. As noted, the parties used a pre-printed form to make their roommate agreement. Mr. Mohammadzadeh states that page 5 of the agreement, which contains paragraph 14 about how to end the roommate arrangement, was missing from the package when they signed it. Ms. Ahmed says the page was included and provided a scanned copy of their agreement with all pages intact. I note that, in his submissions and in email messages in evidence, Mr. Mohammadzadeh referenced the requirements of paragraph 14. In particular, in an April 3, 2020 email, he advised Ms. Ahmed that “you can find rules to end tenancy in contract”. Based on this evidence, I find that it is more likely than not that the page 5 was included in the hard copy at the time of signing and that it formed a part of the parties’ agreement. I will therefore consider the contents of page 5 in my analysis below.
18. As discussed above, the parties’ agreement was for a fixed term between January 1 and June 30, 2020. The agreement stated that at the end of the term, the tenancy

would continue on a month-to-month basis or for another fixed term unless the tenant gave notice to end the tenancy at least one clear month before the end of the term.

19. Mr. Mohammadzadeh says that he gave proper notice to end the tenancy with his verbal notice on March 15 and with his written notice on April 3. I disagree. Paragraph 14 allowed the parties to mutually agree in writing to end the tenancy at any time. Although the parties discussed the possibility of Mr. Mohammadzadeh leaving early, there was no written agreement to that effect. A verbal agreement would not satisfy this requirement.
20. Further, while paragraph 14 does say that a tenancy may be ended by providing one month's written notice, this applies only to monthly, weekly, or other periodic tenancies. The parties specifically agreed to a fixed rather than a periodic tenancy. The terms of their agreement did not contemplate one party being able to terminate the agreement during the fixed term, and the agreement was binding on both parties for its duration.
21. I find that the parties' agreement did not permit Mr. Mohammadzadeh to terminate it unilaterally and they did not mutually agree to an early termination. Therefore, I find he is responsible for the rent for the remainder of the fixed term (namely, May and June). As noted, Ms. Ahmed has mitigated her damages by finding a new tenant for June of 2020. Therefore, I find Mr. Mohammadzadeh must pay Ms. Ahmed only for the May 2020 rent, or \$750.
22. I find that Ms. Ahmed is entitled to pre-judgment interest on the \$750 under the *Court Order Interest Act*. Calculated from the rent due date of May 1, 2020, this equals \$3.47.

### **SC-2020-003527 – Unused Rent**

23. The parties agree that Mr. Mohammadzadeh paid Ms. Ahmed the full \$750 amount of his April 2020 rent. As noted, Mr. Mohammadzadeh did not stay in the home for the entire month of April. He asks for an order that Ms. Ahmed return \$350 for half of

the April rent. I note that half of \$750 would be \$375 but, given my finding below, nothing turns on this.

24. As discussed above in my decision about SC-2020-003130, I found that the parties' agreement was for a fixed term and only contemplated early termination by mutual agreement in writing. As there was no such agreement, I determined that the agreement remained binding on the parties and Mr. Mohammadzadeh was responsible for the rent until the end of the fixed term on June 30, 2020, whether he remained in the home for the duration of the term or not. Based on this decision, I find that Mr. Mohammadzadeh is not entitled to the return of any portion of his April rent. I dismiss this portion of his claim.

### ***SC-2020-003527 – Damage Deposit***

25. There is no dispute that Mr. Mohammadzadeh paid a \$350 damage deposit or that this amount was not returned to him. Ms. Ahmed says that she kept the damage deposit as Mr. Mohammadzadeh damaged her staircase, furniture and a microwave. She provided photographs of scratches on wood trim and furniture, as well as a microwave with a dark substance under the turntable. Mr. Mohammadzadeh denies that he caused damage anywhere in the home, and says that the scratches on the furniture were there before he moved in.
26. I find that the parties' agreement required Ms. Ahmed to return the damage deposit to Mr. Mohammadzadeh within 15 days of the end of the roommate arrangement unless he damaged her home. I find that she bears the burden to establish that Mr. Mohammadzadeh caused damages and the cost to repair them.
27. The undated photos in evidence do show scratches on wood surfaces, but they do not establish that Mr. Mohammadzadeh caused any of them. In addition, although the microwave has a dark substance on it, it is not clear whether the microwave is damaged or simply soiled. Further, there is no indication that Ms. Ahmed has paid to repair or replace any items. Based on this evidence and the parties' agreement, I find

that Ms. Ahmed is not entitled to keep the \$350 damage deposit and she must return it to Mr. Mohammadzadeh.

28. Mr. Mohammadzadeh is entitled to pre-judgment interest on his \$350 damage deposit from May 1, 2020. This equals \$1.62.

### ***SC-2020-003527 – Leak Damage***

29. The parties agree that, under their roommate arrangement, Mr. Mohammadzadeh would be responsible for damages he caused to the home. The evidence shows that Mr. Mohammadzadeh paid Ms. Ahmed \$3,288.28 in damages in 2 e-transfers. However, he asks for an order that Ms. Ahmed repay him \$3,288.20 as he says the leak was not his fault.
30. There is no dispute that a leak occurred in the bathroom attached to Mr. Mohammadzadeh's room. Images in evidence show the jet spray device on the bathroom floor, as well as water on the floor and on the side of the toilet. Video footage also shows water leaking down through the living room ceiling. A January 17, 2020 Emergency Report and a May 5, 2020 email from a restoration company stated that the jet spray fell on the floor and activated the "on" switch, causing the leak and damage to the bathroom and the living room ceiling.
31. Mr. Mohammadzadeh does not deny that he is responsible for the jet spray device he installed, but his position is that he was not responsible for the leak incident. Mr. Mohammadzadeh says that he has used the jet spray device for many years, knows how to use it, and hangs it in a specific place when it is not in use. He says that it would be impossible for him to have left it on the floor when it was not shut off, and suggests that someone else entered the bathroom and did something to the jet spray device to cause it to leak. According to Mr. Mohammadzadeh, he paid for the damages only because Ms. Ahmed said she would take him to court and not because he felt responsible for the leak.



32. Although Mr. Mohammadzadeh says a plumber told him there was nothing wrong with the jet spray device or the way he installed it, there is no statement from the plumber in evidence and no explanation for its absence. In addition, I find that Mr. Mohammadzadeh has not demonstrated that it would be impossible for the jet spray to be left on the floor or fall from its holder. Further, I find that Mr. Mohammadzadeh's suggestion that someone else entered the bathroom to tamper with the jet spray is speculative.
33. Based on the evidence before me, I find that Mr. Mohammadzadeh has not established that someone else was at fault for the jet spray incident and associated damages. Accordingly, I dismiss his claim for reimbursement of \$3,288.20.
34. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the parties have had divided success, I find that it would be appropriate for them to bear their own expenses.
35. In summary, I have found in SC-2020-003130 that Mr. Mohammadzadeh must pay Ms. Ahmed \$750 in rent and \$3.47 in pre-judgment interest, for a total of \$753.47. In SC-2020-003527, I have determined that Ms. Ahmed must pay Mr. Mohammadzadeh \$350 for the damage deposit and \$1.62 in pre-judgment interest, for a total of \$351.62. For convenience, I order that this latter amount be deducted from the amount owing to Ms. Ahmed. This leaves an outstanding total of \$401.85 that Mr. Mohammadzadeh must pay Ms. Ahmed.

## **ORDERS**

36. Within 30 days of the date of this order, I order Mr. Mohammadzadeh to pay Ms. Ahmed \$401.85.
37. Ms. Ahmed is entitled to post-judgment interest, as applicable.
38. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

39. 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.

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Lynn Scrivener, Tribunal Member