



# Civil Resolution Tribunal

Date Issued: October 28, 2020

File: SC-2020-005171

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zo v. Yaghchi*, 2020 BCCRT 1212

BETWEEN:

RA YOON ZO

**APPLICANT**

AND:

HAMID YAGHCHI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This is a dispute between former roommates. The applicant, Ra Yoon Zo, subleased a bedroom from the respondent, Hamid Yaghchi. She seeks \$350 as a refund of her paid damage deposit and another \$350 for a rent refund, for a total of \$700.

2. Mr. Yaghchi says Ms. Zo forfeited the security deposit and the 1 month of rent because she did not provide adequate notice she was moving out and did not find a new tenant. He also says his landlord charged him \$80 for a mailbox key and fob that Ms. Zo did not return when she moved out. Mr. Yaghchi did not file a counterclaim.
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. 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.
7. 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.

## **ISSUE**

8. The issue in this dispute is whether Mr. Yaghchi must refund the security deposit or 1 month of rent to Ms. Zo.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant, Ms. Zo, must prove her claim on a balance of probabilities. This means the CRT must find it is more likely than not that Ms. Zo's position is correct. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
10. The following facts are undisputed. Mr. Yaghchi was a tenant in a 2-bedroom strata lot unit. He subleased one of the bedrooms to Ms. Zo from June 2020 to August 2020 for \$350 per month. The parties did not have a written agreement. Before moving in, Ms. Zo paid Mr. Yaghchi a \$350 security deposit. She also paid him \$350 for July's rent. After moving in, Ms. Zo gave Mr. Yaghchi notice on June 19, 2020 that she was moving out by the end of the month. Mr. Yaghchi agreed to refund the security deposit and July's rent if Ms. Zo found a suitable roommate to take her place. Ms. Zo advertised on social media and although she provided Mr. Yaghchi with 25 candidates, Mr. Yaghchi refused to sublet to any of them. Ms. Zo moved out on June 25, 2020 at Mr. Yaghchi's request.
11. Ms. Zo says Mr. Yaghchi unreasonably refused the people she put forward. She says she fulfilled the terms of their agreement and so Mr. Yaghchi must refund her the \$700.
12. Mr. Yaghchi says he spoke to each of Ms. Zo's candidates and gave several reasons for refusing them. First, he says he "imagined" his landlord was "very uncomfortable" that Ms. Zo listed the room on social media and she had mailbox and house keys that she did not return. Mr. Yaghchi did not explain why he thought his landlord would be uncomfortable or why Ms. Zo's possession of the 2 keys mattered when at his request she was looking for candidates to replace her.

13. Mr. Yaghchi also says Ms. Zo offered the sublet to people without the landlord's permission and informed them there was no contract. Again, he did not explain the significance of this since the parties did not have a written contract. He also says "most" of the candidates showed interest but were not willing to move in. From this I infer there was at least 1 candidate that was willing to move in. Mr. Yaghchi did not explain why he did not rent to a candidate that was willing to sublet.
14. Next, Mr. Yaghchi says some of the candidates were over 28 years old or were couples. Mr. Yaghchi did not explain why the candidate's age mattered. He also stated that "these people were allowing them to have pets, offering extra rooms and lower prices". He did not explain what this statement meant.
15. Finally, Mr. Yaghchi says he did not trust the candidates Ms. Zo found since she called the police on him for no reason when she moved out, defamed him on social media, and verbally harassed him. Ms. Zo says she called the police because Mr. Yaghchi was damaging her belongings. She did not respond to his allegation of defamation and harassment. However, since these events occurred at the time or after Ms. Zo moved out, I find they are not relevant to whether she found a candidate to replace her before she left.
16. As noted in *Bhasin v. Hrynew*, 2014 SCC 71, good faith is an organizing principle in contract law. It provides that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily (paragraph 63). However, what constitutes honesty and reasonableness is "highly context-specific" (paragraph 69).
17. I find that the principle of good faith applies to the parties' agreement for Ms. Zo to find another tenant for Mr. Yaghchi. I find that although Mr. Yaghchi had the discretion to select a suitable new roommate, he was required to act in good faith. I find the evidence shows Mr. Yaghchi did not make a reasonable effort to vet the candidates Ms. Zo found. I find that Mr. Yaghchi did not act in good faith when he rejected the candidates and so he must refund the \$700 to Ms. Zo.

18. Mr. Yaghchi says that the \$350 security deposit was part of the \$700 security deposit he paid to his landlord and so he is not responsible for refunding it to Ms. Zo. The legal doctrine called “privity of contract” applies here. Privity of contract means that a contract cannot give rights or impose obligations on persons or entities who are not parties to a contract. I find that Mr. Yaghchi’s landlord was not a party to the negotiations or contract between Mr. Yaghchi and Ms. Zo. I find that since Ms. Zo paid the security deposit to Mr. Yaghchi, he is responsible for refunding it to her.
19. Ms. Zo admits she kept the mailbox key and fob items and says she is prepared to reimburse Mr. Yaghchi for the amount charged by his landlord. She did not dispute that Mr. Yaghchi was charged \$80 by his landlord and so I find Mr. Yaghchi is entitled to a set-off of \$80 against the refund he owes to Ms. Zo. This leaves \$620 owing by Mr. Yaghchi.
20. The *Court Order Interest Act* applies to the CRT. Ms. Zo is entitled to pre-judgement interest on the \$620 from June 25, 2020, the date the sublet ended, to the date of this decision. This equals \$1.12.
21. 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. I find Ms. Zo is entitled to reimbursement of \$125 in CRT fees. She did not claim dispute-related expenses.

## **ORDERS**

22. Within 14 days of the date of this order, I order Mr. Yaghchi to pay Ms. Zo a total of \$746.12, broken down as follows:
  - a. \$620 for the security deposit and July rent refund less the cost of replacing the mailbox key and fob,
  - b. \$1.12 in pre-judgment interest under the *Court Order Interest Act*, and

c. \$125 in CRT fees.

23. Ms. Zo is entitled to post-judgment interest, as applicable.
24. 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.
25. 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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Rama Sood, Tribunal Member