



Civil Resolution Tribunal

Date Issued: January 15, 2021

File: SC-2020-006559

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Petrie v. Wenngatz*, 2021 BCCRT 43

BETWEEN:

APRIL PETRIE

APPLICANT

AND:

JESSICA WENNGATZ

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a roommate dispute about return of a damage deposit.
2. The applicant April Petrie rented a room from the respondent Jessica Wenngatz. Miss Petrie says that, when she moved out, Ms. Wenngatz failed to refund \$350 of her \$375 damage deposit. Miss Petrie says only a \$25 deduction from the deposit was

reasonable for some minor floor stains. Miss Petrie seeks an order for \$700, broken down as a \$350 refund and a further \$350 in damages for the delay returning the deposit.

3. Ms. Wenngatz says she deducted \$100 from the \$375 damage deposit for carpet stains, hardwood floor damage, a broken toaster, and garbage and mess caused by Miss Petrie. Ms. Wenngatz denies owing Miss Petrie any further payment. She asks me to dismiss the dispute.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says 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, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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 properly 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. In *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's

process and found that oral hearings are not necessarily required where credibility is an issue.

7. Section 42 of the CRTA says 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.

CRT jurisdiction over roommate disputes

9. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as those disputes are decided by the Residential Tenancy Branch (RTB). The *Residential Tenancy Act* (RTA) governs residential tenancies. RTA section 4(b) says the RTA does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the accommodation owner.
10. Because the parties agree that Ms. Wenngatz owns the accommodation, and that they shared kitchen facilities, I find that this claim is within the CRT's small claims jurisdiction, set out in CRTA section 118.

RCMP records request

11. Miss Petrie made an access to information request to the RCMP for records she sought to rely on in this dispute. Specifically, Miss Petrie sought a statement from RCMP Constable TW who attended the move out walk-through with her and Ms. Wenngatz. I infer that Miss Petrie thought Constable TW's statement would support her claim for a refund of the damage deposit.
12. The RCMP records had yet to be produced to Miss Petrie when this dispute moved to adjudication. During the request for records, RCMP Constable TW emailed Miss Petrie indicating that his role was limited to keeping the peace, not resolving or

offering an opinion on any civil claim to the damage deposit. Based on those emails, I find that the RCMP evidence is not reasonably required for a fair resolution of this dispute, bearing in mind that the CRT's mandate includes a speedy and proportionate resolution. I find that I can fairly decide the dispute based on the evidence before me.

ISSUES

13. The issues in this dispute are:

- a. Whether Ms. Wenngatz must refund \$350 of Miss Petrie's damage deposit?
- b. Must Ms. Wenngatz pay Miss Petrie \$350 in damages for alleged delay refunding the deposit?

EVIDENCE AND ANALYSIS

14. In this civil claim, Miss Petrie, as the applicant, bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them only as I find necessary to explain my decision.

15. The following facts are undisputed:

- a. On February 14, 2020, the parties entered a written month-to-month roommate agreement (Agreement) for Miss Petrie to rent a room at Ms. Wenngatz' home.
- b. The Agreement provided that Miss Petrie was not responsible for "reasonable wear and tear to the residential property."
- c. On February 14, 2020, Miss Petrie paid Ms. Wenngatz a \$375 security deposit, \$200 for February 2020 pro-rated rent, and \$750 for March 2020 rent.
- d. On February 20, 2020, Miss Petrie moved into Ms. Wenngatz' home, where the parties shared a kitchen.
- e. A Condition Inspection Report (Report) was prepared at move-in and move-out.

- f. On June 30, 2020, Miss Petrie gave Ms. Wenngatz written notice to end the arrangement effective July 31, 2020.
 - g. Ms. Wenngatz has not re-paid Miss Petrie's damage deposit.
16. The parties disagree about whether Ms. Wenngatz must refund \$350 of the \$375 damage deposit.
17. Miss Petrie submits that a \$25 deduction from the \$375 total damage deposit was appropriate for any "messes" she may have "contributed to", but that any further deduction is not.
18. Ms. Wenngatz submits that a \$100 deduction from the \$375 is fair although she has yet to repay any of the damage deposit. Ms. Wenngatz based her submission on the following alleged damage:
- a. Bong resin stains on the floor,
 - b. Fridge left dirty,
 - c. Dirty dishes left in sink,
 - d. Carpet in the room being "worse" than when Miss Petrie moved in,
 - e. Broken toaster, and
 - f. Miss Petrie changed the locks without Ms. Wenngatz' permission.
19. Miss Petrie filed a copy of the Report in evidence. I find that the Report documents the room's condition and shared facilities at the rental's beginning, and some of the condition at the end of Miss Petrie's stay. I say this because the end of tenancy condition columns on the Report are incomplete.
20. On the Report, Ms. Wenngatz lists bong resin stains on the kitchen and living room walls and trim as residential property damage for which Miss Petrie was responsible. I find that Ms. Wenngatz recorded these stains as damage to the walls in error, when

she meant to record them as damage to the flooring in the kitchen and living room. Ms. Petrie does not contest the existence of a few minor “sticky spots” on the floors.

21. Ms. Wenngatz suggested a refund of \$275 after a \$100 deduction. Ms. Wenngatz then asked Miss Petrie to sign the Report. Miss Petrie refused because she did not agree to the \$100 valuation for the stains.
22. I find that the photographs show these new resin stains on the living room and kitchen floor at the move-out inspection. I will discuss the reasonable value of the deduction for these, below.
23. I also find that the bathtub, sink, toilet and closet were clean at the move-out inspection. While the photographs reveal some marks on the carpet and wall, I find these marks consistent with normal wear and tear rather than damage.
24. Ms. Wenngatz says the deduction is also justified because Miss Petrie left some dirty dishes in the sink when a showing was arranged for a new roommate. Photographs show a small number of dishes in the sink during the showing. Because these dishes do not represent the sink’s condition at the move-out inspection, I find Ms. Wenngatz cannot deduct from the damage deposit for them.
25. I make the same finding about food that was left in the fridge by Miss Petrie on July 15, 2020. This reflects a conflict between the parties’ respective cleaning practices in sharing the kitchen, not the kitchen’s status at move out. While it was reasonable for Ms. Wenngatz to dispose of any expired food, I find doing so does not permit her to make a further deduction from the damage deposit.
26. Ms. Wenngatz says the fridge and under sink areas were left dirty on July 30, 2020. However, she did not file a photograph of the fridge interior or under the sink on that date. Ms. Wenngatz provided photographs or video of these items from July 15, 2020 only. Because I find that Miss Petrie would have cleaned up between July 15 and July 30, 2020, I find no further deduction is warranted for the fridge and under sink areas.

27. Ms. Wenngatz provided a video showing that the toaster does not stay set. Ms. Wenngatz says Miss Petrie broke it. Miss Petrie denies breaking the toaster. This leaves me with an evidentiary tie. Because Ms. Wenngatz bears the burden of proof on this point, I find no set off or deduction is warranted.
28. Aside from Ms. Wenngatz' submission, there was no independent evidence that anyone changed the locks. I find that no deduction is warranted for lock changes.
29. Looking at July 30, 2020 photographs, I find that there were 2 dirty dishes in the sink, and that the inside of the microwave was left dirty. I find some small deduction for this clean-up is reasonable.
30. Ms. Wenngatz says she spent an entire day trying to clean the floor stains, without perfect results. However, she did not provide photographs of the floor after this cleaning attempt. Considering the resin stains and the minor kitchen clean-up, which I find can likely be addressed with some cleaning product and effort, I find that a \$50 deduction from the damage deposit is appropriate.
31. I order Ms. Wenngatz to refund Miss Petrie \$325 of her damage deposit, within 15 days of this decision.
32. Although Miss Petrie sought damages of \$350 for Ms. Wenngatz' delay in returning her deposit, I find she did not prove an entitlement to such damages. Miss Petrie did not provide a submission on this point. Section 38 of the RTA does not apply here, and I find that the Agreement did not provide for extra damages if the damage deposit was not refunded promptly.
33. The *Court Order Interest Act* applies to the CRT. Miss Petrie is entitled to pre-judgment interest on the \$325 from August 15, 2020, which is 15 days after she moved out, to the date of this decision. This equals \$0.62.

34. 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. Because she succeeded in half of her claims, I find Miss Petrie is entitled to reimbursement of \$62.50, which is half of her CRT fees. Miss Petrie did not claim dispute-related expenses.

ORDERS

35. Within 15 days of the date of this order, I order Ms. Wengatz to pay Miss Petrie a total of \$388.12, broken down as follows:

- a. \$325 in debt as a partial refund of her damage deposit,
- b. \$0.62 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 for 50% of CRT fees.

36. Miss Petrie is entitled to post-judgment interest, as applicable.

37. 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.

38. 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.

Julie K. Gibson, Tribunal Member