



Civil Resolution Tribunal

Date Issued: February 26, 2021

Files: SC-2020-006077
SC-2020-006661

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kennedy v. Guan*, 2021 BCCRT 229

BETWEEN:

NICOLE KENNEDY

APPLICANT

AND:

YING GUAN

RESPONDENT

AND:

NICOLE KENNEDY

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. These are disputes between former roommates. The applicant in SC-2020-006077 (and respondent in SC-2020-006661), Nicole Kennedy, rented a room from the respondent in SC-2020-006077 (and applicant in SC-2020-006661), Ying Guan. The parties agree that Ms. Guan asked Ms. Kennedy to leave the home on July 29, 2020. Ms. Kennedy says that she had paid rent for the entire month of July and had to arrange for temporary accommodation at an additional cost. Ms. Kennedy asks for an order that Ms. Guan return her \$400 deposit and pay her \$370.96 in damages. Ms. Guan denies that she owes Ms. Kennedy any money.
2. In SC-2020-006661, Ms. Guan says that Ms. Kennedy damaged some of her property, failed to clean her room, and did not pick up her belongings or return her key immediately. She asks for an order that Ms. Kennedy pay her \$2,811.12 in damages, which includes \$2,000 as compensation for alleged mental anguish. Ms. Kennedy denies that she is responsible for any of these amounts.
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). 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.
5. 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. 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 the interests of justice.

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 like this one. 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. 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.

ISSUES

9. The issues in these disputes are:
 - a. Whether either party breached the roommate agreement,
 - b. Whether Ms. Kennedy is entitled to the return of her deposit,
 - c. Whether Ms. Kennedy is entitled to the \$370.96 in damages she claims, and
 - d. Whether Ms. Guan is entitled to the \$2,811.12 in damages she claims.

EVIDENCE AND ANALYSIS

10. On June 1, 2020 the parties entered into an agreement in which Ms. Kennedy rented a room in Ms. Guan's home. The agreement did not identify an end date, but stated

that it would start and end at noon. The agreement provided that Ms. Kennedy would pay rent of \$800 per month and a deposit of \$400.

11. The parties were not well suited as roommates. Ms. Guan says that Ms. Kennedy had talked about leaving the home on July 25 but did not do so. Ms. Guan says (and Ms. Kennedy denies) that Ms. Kennedy was disruptive and threatened her. Ms. Guan sought advice from a police officer on July 29, 2020. Based on that conversation and the fact that Ms. Kennedy had not yet paid rent for the next month, Ms. Guan decided to terminate the rental agreement at the end of that day.
12. Ms. Guan sent Ms. Kennedy a July 29, 2020 email that said, "You can't come in my place any more". Ms. Kennedy sent Ms. Guan an email in reply asking for the return of her damage deposit. She also stated that she would return the key when she picked up her belongings. Ms. Guan did not allow Ms. Kennedy to return to the home to retrieve her belongings until August 3, 2020.
13. Ms. Kennedy says she was not able to stay in the room for which she had paid between July 29 and 31, and asks for reimbursement of the \$77.42 in rent she paid for these days. Ms. Kennedy also asks for reimbursement of \$293.54 in hotel costs.
14. Ms. Guan says that Ms. Kennedy damaged a patio umbrella and bicycle lock that cost \$309.12 to replace. She also says that, because Ms. Kennedy did not return her key immediately, she spent \$102 for a locksmith to change the locks. Ms. Guan also claims \$150 for cleaning and \$150 for storing Ms. Kennedy's belongings, as well as a \$100 charge for an early move-in. In addition, Ms. Guan asks for \$2,000 in compensation for mental anguish she says Ms. Kennedy caused.

Was there a breach of the agreement?

15. According to the parties' agreement, the roommate arrangement started on June 1 and rent was paid "per month". There appears to be no dispute that Ms. Kennedy

paid rent in June and July. I find that, in these circumstances, the July rent covered the entire month, and Ms. Kennedy was entitled to remain in the home until July 31.

16. Although Ms. Guan may have found some of Ms. Kennedy's behaviour to be unusual, I find that the evidence before me does not establish that Ms. Kennedy made any threats as she alleges. I find that Ms. Guan has not established that she had cause to end the roommate arrangement, and the parties' agreement did not give Ms. Guan the ability to terminate the agreement unilaterally and immediately.
17. While I accept that Ms. Guan wished to end the roommate arrangement, I find that, by asking Ms. Kennedy to leave and denying her access to the home before the end of the month, Ms. Guan breached the agreement. I will consider the parties' claims for damages below, keeping in mind that damages for breach of contract are intended to place a party in the position they would have been in if the contract had been carried out as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39 (*Water's Edge*).

Is Ms. Kennedy entitled to the return of the \$400 deposit?

18. The parties agree that Ms. Kennedy paid \$400 for what the parties refer to as a "damage deposit". Their agreement refers to it as a "security deposit" that would be returned at the end of the roommate arrangement, less any deductions provided for in the agreement. I find that the effect of the parties' agreement is that only the prescribed forms of damage to the home and "any other repairs or cleaning due to any damage beyond normal wear and tear" could be deducted from the deposit. The agreement also says that Ms. Kennedy could be charged for "professional cleaning and repairs" if she failed to make alternate arrangements.
19. Based on the wording of the parties' agreement, I find that deductions from the deposit may be made only for damage to the home, not any of Ms. Guan's personal property. Even if this was not the case, I find that Ms. Guan has not established that Ms. Kennedy was responsible for any damage to the patio umbrella or bicycle lock, and that she is not entitled to make any deductions from the deposit for these items.

20. Ms. Guan says that she paid a third party \$150 for 4 hours of cleaning and 3 hours of packing. She also claims \$150 for storing Ms. Kennedy's belongings. The agreement does contemplate that Ms. Kennedy would pay for cleaning due to damage beyond normal wear and tear or if Ms. Kennedy failed to make alternate arrangements for cleaning. I find that those circumstances do not apply here. As noted, Ms. Guan asked Ms. Kennedy to leave and did not allow her to return to the home. Ms. Guan decided to have someone perform the packing and cleaning despite Ms. Kennedy's willingness to clean out the room herself. I find that it was Ms. Guan's own breach of the parties' agreement that prevented Ms. Kennedy from cleaning the room and removing her belongings. As a result, I find that Ms. Guan is not entitled to deduct any charges for cleaning, packing or storage from Ms. Kennedy's deposit.
21. Ms. Guan provided an invoice from a locksmith for \$102 for labour and materials. Although Ms. Guan chose to have a locksmith change the locks, there is no indication that this was the result of damage caused by Ms. Kennedy. The parties' agreement did not contemplate Ms. Kennedy paying for this type of expense. I find that Ms. Guan may not deduct the cost of the locksmith from the amounts owing to Ms. Kennedy.
22. I find that Ms. Kennedy is entitled to the return of her full \$400 deposit.

Is Ms. Kennedy entitled to reimbursement for unused rent or her hotel costs?

23. Because she did not have access to the home for the last days of July, Ms. Kennedy asks for compensation for 3 days of unused rent (or \$77.42) and of \$293.54 for 3 days of hotel costs. Ms. Guan denies that she is responsible for these amounts as she says that Ms. Kennedy could have stayed with family or at a shelter. She also suggests that Ms. Kennedy fabricated the hotel invoice.
24. I find that, as Ms. Kennedy did not receive accommodation for the entire month for which she paid, she is entitled to a refund of the unused portion of her rent. Although Ms. Kennedy claims for 3 days of rent, the parties' agreement would have ended at noon on July 31, 2 days after Ms. Guan asked her to leave. I find that Ms. Kennedy

is entitled to compensation for 2 days of rent for a total of \$51.62 rather than the \$77.42 she claims.

25. I accept that Ms. Kennedy had to find alternate accommodation as a result of Ms. Guan terminating the roommate arrangement early. However, I find that she has not proven all of her claimed expenses. A hotel invoice in evidence shows a charge for only 1 night of \$145.77 (inclusive of taxes). I find that there is no indication that Ms. Kennedy fabricated this invoice. However, the amount shown on it differs from the claim of \$293.54 and Ms. Kennedy did not explain the difference. Further, as noted, the agreement would have expired at noon on July 31 so any need for accommodation for that night would not be related to Ms. Guan's breach of the agreement. I find that Ms. Kennedy has proven an expenditure of only \$145.77 in hotel costs.
26. Based on the reasoning in *Water's Edge*, I find that Ms. Kennedy is not entitled to compensation both for the unused rent and the hotel charges as this would amount to double recovery and would put Ms. Kennedy in a better position than she would have been in if not for the breach of the agreement. Deducting the unused rent from the hotel costs results in \$94.15, and I order Ms. Guan to pay Ms. Kennedy this amount.
27. The next consideration is Ms. Guan's submission that Ms. Kennedy should pay her \$100 in additional rent because she moved into the home before June 1, 2020. Although Ms. Guan says that Ms. Kennedy moved into the home on May 29, emails in evidence show that this occurred on May 31.
28. The parties' agreement says that its term started at noon on June 1, 2020, and that the parties signed it on June 1. Therefore, the parties would have been aware of the early move-in at that time. However, there is no indication that the parties agreed to change the start date of their agreement or increase the rent payment under the agreement to account for the early move-in. There is also no indication that there was a separate agreement to charge \$100 as the "airBnB price" as Ms. Guan alleges. Absent an agreement about compensation for the early move-in, I find that Ms. Guan

has not established that she is entitled to any additional rent, and dismiss this aspect of her claim.

Is Ms. Guan entitled to damages for mental anguish?

29. Ms. Guan claims \$2,000 in damages for mental anguish. She says that Ms. Kennedy scared and threatened her, and says that her behaviour caused headaches, sleep problems and weight loss. Ms. Kennedy denies that she threatened Ms. Guan or that she is responsible for any distress.
30. Although it is not binding upon me, I agree with the decision in *Eggberry v. Horn et al*, 2018 BCCRT 224, which states that where there is no independent evidence of mental distress, the claim must be dismissed. Ms. Guan's submissions contain a December 14, 2020 handwritten note in which a physician described some of her medical conditions. She also provided a letter from a physician who provided additional details about Ms. Guan's medical conditions. According to the physician, Ms. Guan needs rest and stress is not helpful for her recovery. The physician did not explain how Ms. Guan's then-current stress as reported on December 17, 2020 was related to her potential interactions with Ms. Kennedy in July of 2020.
31. I accept that Ms. Guan has some pre-existing medical conditions and that she found her interactions with Ms. Kennedy to be unpleasant. However, I find that Ms. Guan has not provided evidence of a mental health issue that resulted from the roommate arrangement. As she has not established this aspect of her claim, I find that Ms. Guan is not entitled to any damages for it.
32. In summary, I have found in SC-2020-006077 that Ms. Kennedy is entitled to the return of her \$400 deposit, as well as \$94.15 in accommodation costs. In SC-2020-006661, I have determined that Ms. Guan is not entitled to any of the \$2,811.12 in damages she claimed.

33. The *Court Order Interest Act* applies to the CRT. I find that Ms. Kennedy is entitled to pre-judgment interest on the \$494.15 from July 29, 2020 (being the date of the breach of the parties' agreement) to the date of this decision. This equals \$1.29.
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. I see no reason in this case not to follow that general rule. Ms. Kennedy was the successful party, but she did not pay any CRT fees and therefore is not entitled to any reimbursement. As Ms. Guan was not successful, I dismiss her claim for reimbursement of CRT fees. Neither party made a claim for dispute-related expenses.

ORDERS

35. Within 30 days of the date of this order, I order Ms. Guan to pay Ms. Kennedy a total of \$495.44, broken down as follows:
- a. \$494.15 for the deposit and accommodation costs, and
 - b. \$1.29 in pre-judgment interest under the *Court Order Interest Act*.
36. Ms. Kennedy is also entitled to post-judgment interest, as applicable.
37. Ms. Kennedy's remaining claims are dismissed.
38. Ms. Guan's claims are dismissed.
39. 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.

40. 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.

Lynn Scrivener, Tribunal Member