



Civil Resolution Tribunal

Date of Original Decision: March 10, 2021

Date of Amended Decision: March 11, 2021

File: SC-2020-006709

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kurvers v. Poon Tip*, 2021 BCCRT 273

B E T W E E N :

MARIAN KURVERS

APPLICANT

A N D :

DAVE POON TIP

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is between former roommates. The applicant, Marian Kurvers, says that the respondent, Dave Poon Tip, locked her out of the home and held her belongings until she could retrieve them with police assistance. Ms. Kurvers claims \$1,095 for unused rent and a security deposit, as well as \$3,905 as compensation for cleaning

and repair of her belongings. Mr. Poon Tip denies that he is responsible for Ms. Kurvers' claims, and says that she brought her claims outside the 2-year limitation period.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.
7. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, the

Residential Tenancy Act does not apply to this dispute because the RTB refuses jurisdiction over roommate disputes. Therefore, I find that this dispute is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.

8. Mr. Poon Tip stated in his Dispute Response that he wanted "a resolution that binds Ms. Kurvers from further harassing [him] endlessly with false claims". Ordering someone to do something or stop doing something is known as injunctive relief. Injunctive relief is outside the CRT's small claims jurisdiction, except where permitted by section 118 of the CRTA. I find that there are no relevant CRTA provisions that would permit me to grant injunctive relief in these circumstances and, accordingly, I will not consider the remedy requested by Mr. Poon Tip.

ISSUES

9. The issues in this dispute are:
 - a. Whether any of Ms. Kurvers' claims are out of time,
 - b. Whether Ms. Kurvers is entitled to the return of \$1,095 for \$695 in unused rent and a \$400 security deposit, and
 - c. Whether Ms. Kurvers is entitled to \$3,905 for cleaning and repair of her belongings.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this, an applicant must prove their claims on a balance of probabilities. I have read all the parties' evidence and submissions but will refer only to the evidence and argument that I find relevant to provide context for my decision.
11. The parties signed a Room Rental Agreement on July 11, 2018 for the month-to-month rental of a room in Mr. Poon Tip's home. The agreement required that Ms. Kurvers pay \$695 per month in rent, plus 50% of the utilities. The agreement stated that Ms. Kurvers would pay a \$400 security deposit that was to be returned to her

within 2 weeks of her move-out date, less any deductions for cleaning or repairs. Either party could end the agreement with 30 days' notice to the other party.

12. Ms. Kurvers paid the \$400 damage deposit and \$500 for pro-rated July rent. She moved into the home on July 12, 2018. Ms. Kurvers also paid \$695 for August rent.
13. Mr. Poon Tip was away from the home for much of July. When he returned, the parties determined that they were not well suited as roommates. In an August 8, 2018 letter, Mr. Poon Tip asked Ms. Kurvers to leave the home by the end of the month. Mr. Poon Tip stated in the letter that he would refund the prorated amount of rent if Ms. Kurvers wished to leave before the end of the month.
14. On August 9, 2018, Ms. Kurvers sent Mr. Poon Tip an email saying that she would leave the home at noon the next day, despite receiving less notice than was required by the agreement. She asked for the return of \$493 in prorated rent, the \$400 security deposit, and \$300 in damages for alleged harassment.
15. Ms. Kurvers says that she did not have access to the room at some point after this exchange of correspondence. Mr. Poon Tip says that Ms. Kurvers had already packed her belongings and removed some of them from the home when she was "locked out" after her "false accusation of misconduct" and "blackmail".
16. According to a police report in evidence, Mr. Poon Tip contacted the police on August 9, 2018 as a result of a threat Ms. Kurvers allegedly made to him. Several police officers attended the home, and advised the parties that it was an RTB matter.
17. On the afternoon of August 11, 2018, Ms. Kurvers retrieved the remainder of her belongings from the home with police assistance. One of the officers signed a document prepared by Mr. Poon Tip in which he discussed the presence of damage to the walls that he said had not been there previously.
18. Ms. Kurvers says that Mr. Poon Tip has not returned the \$400 security deposit or her unused rent. I note that Ms. Kurvers claims the return of the entire \$695 in rent she paid for August 2018 despite having used a portion of it. She also asks for \$3,905 in

compensation for damage she says Mr. Poon Tip caused to her belongings. Mr. Poon Tip denies that he damaged any of Ms. Kurvers' belongings. Although he did not specifically address her claims for unpaid rent or the security deposit, Mr. Poon Tip says that Ms. Kurvers did not leave the room in "superior condition".

19. The first consideration is whether Ms. Kurvers filed her claims within the applicable limitation period. Mr. Poon Tip says Ms. Kurvers started her claim after the limitation period expired. Ms. Kurvers did not provide any submissions on this issue.
20. A limitation period is a period in which a person may bring a claim. If that period expires, the right to bring the claim ends. The current version of British Columbia's *Limitation Act* came into force on June 1, 2013, and section 6 says there is a 2-year limitation period that starts to run on the day on which the day on which a claim is discovered or ought to have been discovered.
21. I find that Ms. Kurvers would have known about any damage to her belongings on or shortly after August 11, 2018 when she moved the last of her belongings out of the home. As noted, the parties' agreement required the return of the damage deposit within 2 weeks. Therefore, Ms. Kurvers would have known about Mr. Poon Tip's failure to return security deposit (as well as the unused portion of her rent) when that 2-week period expired on August 25, 2018.
22. Ms. Kurvers submitted her application to the CRT on August 31, 2020. In order for her claims to be in time, they had to arise after August 31, 2018. I find that Ms. Kurvers knew or reasonably ought to have known about her claims against Mr. Poon Tip on August 25, 2018. Therefore, the 2-year limitation period expired on August 25, 2020, before Ms. Kurvers commenced her claim. As the limitation period has expired, Ms. Kurvers' claims are statute-barred under the *Limitation Act* and she no longer has the right to pursue these claims against Mr. Poon Tip.
23. 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. Ms. Kurvers did not pay CRT fees. As she was not successful, I dismiss her claim for dispute-related expenses.

ORDER

24. I dismiss Ms. Kurvers' claims and this dispute.

Lynn Scrivener, Tribunal Member

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ⁱ Amendment made to correct an inadvertent typographical error, as permitted by section 64 of the CRTA.