



Civil Resolution Tribunal

Date Issued: March 25, 2021

File: SC-2020-007735

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vij v. Mihalicz*, 2021 BCCRT 330

BETWEEN:

ASHLEY VIJ

APPLICANT

AND:

BREE MIHALICZ and LEANNE MIHALICZ

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This roommate dispute is about unpaid rent and related costs. The applicant, Ashley Vij, rented an apartment with the respondent, Bree Mihalicz for a 6-month fixed term. Ashley Vij says that Bree Mihalicz moved out and stopped paying her share of the rent before the end of the fixed term. Ashley Vij says a Residential Tenancy Board (RTB) decision ordered her to pay all of the rent to the apartment owners.

2. In this Civil Resolution Tribunal (CRT) proceeding, Ashley Vij claims \$2,925 for unpaid rent, \$487.50 for her half of the apartment's security deposit, \$240 for counselling due to alleged stress from the rent dispute, and a \$100 RTB filing fee for the dispute between her and the apartment owners. Ashley Vij says the respondent Leanne Mihalicz co-signed the rental agreement, so is also liable for her claims. Given that the respondents share the same last name and meaning no disrespect, I will use the parties' first names below, to avoid confusion.
3. Bree says she gave the owners proper notice to end her tenancy, that Ashley decided to stay under an alleged new tenancy agreement, and that Ashley had enough time to find a new roommate after she gave notice. So, Bree says she owes nothing.
4. Leanne, who is Bree's mother, says she signed the rental agreement on Bree's behalf, without further explanation. The parties do not deny that Leanne never lived at the apartment, agreed to contribute rent money, or spoke to the owners or Ashley about rent or rental issues.
5. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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.
7. 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.

8. 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.
9. 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.
10. In her submissions, Ashley says she no longer wishes to pursue her \$487.50 claim for her half of the apartment's security deposit, because it was used to pay her share of the last month of rent. I dismiss this claim against the respondents.
11. The RTB refuses jurisdiction over roommate disputes like this one. Ashley and Bree admit that they were co-tenants, and that they agreed to share the monthly rent and security deposit during their tenancy (roommate agreement). So, I find this dispute is primarily about the roommate agreement, which falls within the CRT's small claims jurisdiction set out in section 118 of the CRTA.
12. Further, I find the RTB's August 20, 2020 decision was about whether Ashley should pay outstanding rent to the owners, according to the terms of the October 23, 2019 rental agreement between her, Bree, and the owners (rental agreement). Bree was not a named party in the RTB dispute. Contrary to Bree's argument, I find that the RTB has not decided Ashley's CRT claims against the respondents, so I should not refuse to resolve them under CRTA section 11(1)(a)(ii).

ISSUES

13. The issues in this dispute are:

- a. Whether the respondents are responsible for a share of the apartment's rent in February 2020, March 2020, and April 2020, totalling \$2,925.
- b. Whether the respondents are responsible for reimbursing Ashley a \$100 RTB fee.
- c. Whether the respondents are responsible for Ashley's counselling fees.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant Ashley must prove her claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer to the relevant evidence only to the extent necessary to explain my decision.
15. I reviewed the rental agreement Ashley and Bree signed on October 23, 2019. It appears to be written on a standard RTB Residential Tenancy Agreement template. It is undisputed that under the rental agreement, Ashley and Bree agreed to a 6-month fixed term rental with the apartment owners, from November 1, 2019 until April 30, 2020. The rental agreement required the parties to vacate the apartment on April 30, 2020. The rental agreement allowed subletting with the owners' written consent.
16. The rental agreement said that a monthly tenancy, or another periodic tenancy, could be ended by giving the owners proper notice, but I find this was a fixed term tenancy. Contrary to Bree's argument, I find the rental agreement did not allow a single party to terminate it before the end of the fixed term, with or without "proper" notice. However, I find the rental agreement said that the parties and owners could mutually agree in writing to end the rental agreement at any time. I also find the rental agreement said that any change or addition to the agreement must be agreed to in writing and initialed by both the owners and the parties or it is not enforceable.
17. The rental agreement said monthly rent was \$1,950, plus a \$975 security deposit. The parties agree that under the unwritten roommate agreement, Ashley and Bree each agreed to pay \$975 of the monthly rent to the owners, and to split the security deposit.

18. Leanne says she signed the rental agreement “on behalf of” Bree. Leanne’s name appears on the agreement, and Leanne signed some agreement addendums that are not relevant here, but I find that only Ashley and Bree signed the rental agreement. Regardless, I find the evidence fails to show that Leanne agreed to the unwritten roommate agreement, including any term requiring her to pay a share of the rent. So, I dismiss the claims against Leanne. When I refer to the “parties” below, I mean Ashley and Bree only.

Is Bree responsible for a share of unpaid rent in February 2020, March 2020, and April 2020?

19. It is undisputed that in late November 2019, Bree told Ashley and the owners in writing that she would be moving out on December 31, 2019. It is also undisputed that Bree paid her portion of January 2020 rent. Bree says she paid the January rent to give Ashley more time to find a subletter, while Ashley says Bree paid rent because she was still a tenant. In any event, Bree did not make any rent payments for February 2020, March 2020, and April 2020, and she was not reimbursed for her portion of the security deposit. Notably, I find that Bree told the owners and Ashley she was moving out and finding a replacement tenant, not that she was terminating the rental agreement. Given the terms of the rental agreement discussed above, I find Bree could not terminate it before April 30, 2020 without the written, initialled agreement of the owners and Ashley. I find there was no such agreement by any of them.

20. I find a December 20, 2019 note in evidence, signed by an owner and Bree, gave Bree permission to sublet her rental interest in the apartment from January 1, 2020 to April 30, 2020, and that Bree would “be liable for the sublet until April 30, 2020.” The evidence shows Ashley advertised the potential sublet as a favour to Bree, but did not accept any obligation to find a subletter or pay Bree’s half of the rent. Bree never successfully sublet her interest in the apartment. Ashley undisputedly paid half the apartment’s rent in February 2020, March 2020, and April 2020. Ashley says that the other half remained Bree’s responsibility. Bree says she “terminated the tenancy” so owed no further rent under the rental agreement or roommate agreement, despite

paying January 2020 rent. The owners initiated the RTB dispute against Ashley alone to recover the unpaid rent which, as explained below, they were free to do.

21. The August 20, 2020 RTB decision quoted from Residential Tenancy Policy Guideline 13(C), which says that co-tenants are jointly and severally responsible for the payment of rent when it is due. I agree. This means that the owners could collect the entire amount owing under the rental agreement from either party or from both, and that it was then up to the parties to determine whether either of them had paid what was agreed under the roommate agreement.
22. I considered the RTB's decision, although it is not binding on me in this context. The RTB said that Ashley continued paying rent and living in the apartment under the rental agreement's terms and conditions, and that her tenancy continued beyond January 2020 by agreement. The RTB decision does not clearly say whether the owners and Ashley entered into a new, unwritten rental agreement, and does not address the rental agreement's requirement for any changes or early termination to be in writing and initialled by all the parties. On balance, I find that the "by agreement" referred to in the RTB decision is the original rental agreement. The RTB decision also says that Ashley was responsible for \$3,900 in unpaid rent for February 2020, March 2020, and April 2020, which it ordered her to pay. Despite noting that co-tenants are jointly and severally liable, the RTB did not order Bree to pay anything, presumably because Bree was not a named party in the RTB dispute. So, as noted, I find that the RTB decision did not address the claims against Bree in this dispute.
23. Having weighed the evidence, including the RTB decision, I find that the owners never agreed to terminate the tenancy for either of the co-tenant parties. I find the rental agreement continued until its April 30, 2020 end date. So, I find that each party remained responsible for her share of the rent under the roommate agreement, regardless of whether she chose to live in the apartment or found a subletter.
24. I find Bree owed Ashley for her \$975 share of the rent in each of February 2020, March 2020, and April 2020, which equals \$2,925. The RTB ordered the owners to keep the parties' \$975 security deposit as a partial rent payment. In her arguments,

Ashley says that Bree should be credited for her \$487.50 equal share of the security deposit. Bree says she paid \$512.50 of the deposit and Ashley paid \$462.50, without further explanation. I find the evidence does not confirm how much of the security deposit each of the parties paid. I find it unlikely that the parties would have paid different amounts toward the security deposit without a reason, which is absent here. On balance, I find that Bree paid \$487.50 of the security deposit kept by the owners. Subtracting that amount from \$2,925, I find Bree owes Ashley \$2,437.50 for unpaid rent under the roommate agreement.

Is Bree responsible for Ashley incurring a \$100 RTB fee?

25. The RTB decision ordered Ashley to pay a \$100 RTB filing fee. Ashley says the RTB dispute only arose because Bree did not pay her share of the rent as agreed. So, she claims \$100 for reimbursement of that fee.
26. As noted, the parties were jointly and severally liable for the entire rent owed to the owners under the rental agreement. This means that if one party failed to contribute to a rent payment, the other party was responsible to the owners for paying the entire rent payment. Here, I find that although Bree had ceased paying rent, Ashley remained jointly and severally responsible for ensuring that the owners received all the rent. I find it likely that Ashley could have avoided the RTB dispute and the resulting \$100 fee if she had paid the full \$1,950 monthly rent payments to the owners on time and sought compensation from Bree, as she is now doing in this CRT dispute.
27. Ashley does not say that she was unable to afford the entire monthly rent herself. So, on balance, I find Ashley has not met her burden of proving that it was Bree's failure to pay rent under the roommate agreement that caused Ashley to be charged the \$100 RTB fee. I dismiss this claim.

Is Bree responsible for Ashley's counselling fees?

28. Ashley says that the stress of the unpaid rental situation caused her to require counselling. She submitted letters and records showing she attended several

counselling or mental health therapy sessions from January 2020 onward, but with no proof of their cost.

29. I dismiss Ashley's claim for \$240 in counselling fees because she did not submit receipts or other supporting evidence proving that she paid or owes anything for them. So, I do not need to address the other issues about whether the rent dispute caused those alleged counselling costs.

CRT FEES, EXPENSES, AND INTEREST

30. Under the *Court Order Interest Act*, Ashley is entitled to pre-judgment interest on the \$2,437.50 owing. I find pre-judgment interest is calculated from the date of the August 22, 2020 RTB decision ordering Ashley to pay missing rent amounts until the date of this decision. This equals \$6.49.
31. 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. Bree was largely unsuccessful, so I find she must reimburse Ashley for \$175 in CRT fees. Ashley also claims \$60 for the cost of a letter from her counsellor as a dispute-related expense. Ashley was not successful in that claim, and I find the letter was unhelpful and was not a reasonable CRT dispute-related expense. I order no reimbursement for the letter expense.
32. I find Ashley was unsuccessful in her claims against Leanne. So, I find Ashley is not entitled to any reimbursement from Leanne, including \$33.84 in requested copying and courier expenses for serving the Dispute Notice on Leanne. Leanne paid no CRT fees and claims no CRT-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Bree to pay Ashley a total of \$2,618.99, broken down as follows:

- a. \$2,437.50 in debt for unpaid rent,
- b. \$6.49 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

34. I dismiss the remaining claims against Bree, and I dismiss all the claims against Leanne. Ashley is entitled to post-judgment interest, as applicable.

35. 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.

36. 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.

Chad McCarthy, Tribunal Member