Civil Resolution Tribunal

Date Issued: March 31, 2021

File: SC-2020-007713

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chapa v. Heykants,* 2021 BCCRT 356

B E T W E E N :

DANNA ROCIO CONTRERAS CHAPA

APPLICANT

A N D :

TAMMY MARIE HEYKANTS

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute between former roommates. The applicant, Danna Rocio Contreras Chapa, says the respondent, Tammy Marie Heykants, has failed to repay her for a pet deposit, utilities, cleaning and moving expenses, a broken statue, and rent for September 2020, as discussed below. Miss Chapa claims a total of $4,520.65.

2. Ms. Heykants says Miss Chapa fabricated certain claims and says she does not owe any of the amounts claimed. Ms. Heykants says to the extent any money is owing, it either is offset by her deposits Miss Chapa retained or is owed by other tenants, not her.

3. The parties are each 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. 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 court has recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me.

6. 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.

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.

8. 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* (RTA) does not apply to this dispute because the RTB refuses jurisdiction over roommate disputes like this one. Therefore, I find that this dispute is within the CRT's small claims jurisdiction under section 118 of the CRTA.

ISSUES

9. The issues in this dispute are:

    a. Whether Ms. Heykants owes a $214.09 pet deposit.

    b. Whether Ms. Heykants owes $751.55 in utilities payments.

    c. Whether Ms. Heykants owes $300 as a ½ share of rent received from a temporary tenant ME in September 2020.

    d. Whether Ms. Heykants owes $175 for cleaning and hauling expenses.

    e. Whether Ms. Heykants owes $766.67 for her September 2020 rent.

    f. Whether Ms. Heykants owes $1,533.34 on lost rent for September 2020, because other tenants decided not to stay in the house.

    g. Whether Ms. Heykants owes $500 in damages and $130 for carpet cleaning.

    h. Whether Ms. Heykants owes $150 for a broken wooden statue.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Miss Chapa must prove her claims on a balance of probabilities. I have read all the evidence and submissions before me, but refer only to what I find relevant to provide context for my decision.

11. The parties agree:

    a. At any one time, there could be up to 4 occupants living in the rental property, including Miss Chapa and Ms. Heykants.

    b. There is a "written tenancy agreement". In evidence is a tenancy agreement between the landlord and Miss Chapa, with Ms. Heykants and tenants CF and DM listed on a Schedule of Parties (rental agreement). The rental agreement was for a fixed term between October 15, 2019 and April 30, 2021.

    c. The property's total monthly rent was $3,200. As set out on the rental agreement, $1,600 was the required damage deposit plus $1,600 for a pet deposit.

    d. Utilities were to be calculated at 75% of total utilities used, divided by the number of occupants living in the house.

12. There is no written roommate agreement in evidence. The evidence indicates the entire rental agreement ended at the end of September 2020.

13. It is clear that the parties' relationship had deteriorated by August 2020. I find roommate situations, with shared living space, are inherently susceptible to interpersonal conflicts. I will not detail the parties' allegations about the other's demeanour or allegedly malicious motivation, as I find either version is equally likely.

14. In particular, I place no weight on Miss Chapa's submission of her own Facebook posts complaining about Ms. Heykants' behaviour. I find those do not establish that Ms. Heykants in fact acted as alleged. I say the same about Miss Chapa's texts with a third party and an unidentified tenant who expressed sympathy and said they had

caught Ms. Heykants in “a couple of lies”. I also find the latter evidence is not sufficiently specific to establish Ms. Heykants’ liability. Below I will address only the evidence relevant to Miss Chapa’s specific claims.

Whether Ms. Heykants owes a $214.09 pet deposit

15. I accept Miss Chapa paid the $1,600 pet deposit to the landlord, as shown in the property manager’s account statement. Miss Chapa says Ms. Heykants still owes her $214.09, for Ms. Heykants’ share of the pet deposit.

16. Miss Chapa does not say what Ms. Heykants originally owed for the pet deposit, but says Ms. Heykants (together with DM who was her partner for part of the tenancy) was the only one with pets in the house. Based on there being 4 occupants when the rental agreement was signed, I find that Ms. Heykants was at least responsible for a ¼ share of the deposit, or $400. Other than saying DM owed $200 and not her, Ms. Heykants submitted no evidence to support her assertion that her pet deposit share was only $200, which I find is inconsistent with the rental agreement and the parties’ likely roommate agreement. Ms. Heykants also submitted no proof that she has paid the $200 she admits she owed. I find at most Ms. Heykants has paid $185.91, the difference between $400 and the claimed $214.09. On balance, I find Ms. Heykants owes the claimed $214.09.

Whether Ms. Heykants owes for September 2020 utilities

17. Initially, Miss Chapa claimed a total of $751.55 in utilities charges, with $439.88 for September 2020 utilities and $311.67 for “missing payments utilities October – August”. This September utilities claim is partly based on Miss Chapa’s allegation that Ms. Heykants purposely overused utilities to stress Miss Chapa. Miss Chapa later says Ms. Heykants owes $1,191.43 ‘pending receipt of the final utility bill’.

18. First, I am not prepared to consider any claim beyond the $751.55, as I find the excess is speculative and not properly before me as the claims in the Dispute Notice were limited to $751.55. Also, Ms. Heykants moved out by September 30, so I find she owes nothing for October.

19. Next, I turn to the overuse allegation. The house had multiple tenants, and I cannot conclude from Miss Chapa's submitted videos, of the house with lights and fireplace on, that Ms. Heykants is responsible for overuse of utilities. I note Miss Chapa submitted no witness statements about Ms. Heykants' alleged overuse, and she also provided no explanation of what portion of the utilities arises from the alleged overuse.

20. At the same time, I also have no supporting evidence before me that Miss Chapa is responsible for overuse of utilities, as Ms. Heykants alleged in her Dispute Response filed at the outset of this proceeding. In her later submissions, Ms. Heykants just says "false claims" and that the utility bill was paid between 6 people. I prefer Ms. Heykants' earlier Dispute Response in which she admitted she had not contributed to the September utilities.

21. So, given the parties' agreement that there were up to 4 people sharing the house, I find Ms. Heykants responsible for a ¼ share of 75% of the September utility bills, consistent with the rental agreement. I have used a ¼ share because the parties did not clearly explain how many people were living in the home in September, and I infer Ms. Heykants' undisputed reference to "6 people" addresses the fact that 25% of the utilities were paid by others living elsewhere in the property.

22. As for the amount owing, I find the best evidence is the property manager's statement of account listing the utilities bills, which takes into account the 75% owing by the house's occupants. I find it likely that Ms. Heykants has not paid her ¼ share of $113.10 in Fortis BC charges and her ¼ share of $321.50 in BC Hydro charges. So, I find Ms. Heykants owes $108.65 for the claimed utilities, which covers utilities provided in August and September 2020. I dismiss the balance of this claim.

Whether Ms. Heykants owes $300, as a ½ share of ME's September rent.

23. Miss Chapa says she agreed to Ms. Heykants' request to bring in another tenant ME for a month, because Ms. Heykants verbally agreed to pay Miss Chappa half of ME's $600 in rent. It is undisputed that ME paid Ms. Heykants for September 11 to October

1, 2020, but Ms. Heykants never paid Miss Chappa any part of the $600. In contrast, Ms. Heykants says Miss Chapa had nothing to do with the arrangement.

24. Miss Chapa submitted ME's signed September 15, 2020 letter about his $600 payment to Ms. Heykants, but it does not mention Miss Chapa receiving money for ME's tenancy.

25. I find there is insufficient evidence that the parties agreed Miss Chapa would receive compensation when she agreed ME could move in for 3 weeks, and Miss Chapa bears the burden of proof. I dismiss this claim.

Whether Ms. Heykants owes $175 for cleaning and hauling expenses

26. Miss Chapa claims $175 for clean-up and hauling away Ms. Heykants' furniture, which the evidence shows was a broken bookcase and a worn patio loveseat. Miss Chapa submitted photos of that furniture, and of carpet stains in a bedroom, garbage, cat fur, and old food that Miss Chapa says Ms. Heykants failed to remove.

27. In contrast, Ms. Heykants says she cleaned when she moved out, though says she did not need to return to clean carpets because she expected Miss Chapa was not to return her damage deposit and because Miss Chapa was going to get the entire home's carpets cleaned anyway. Contrary to Ms. Heykants' apparent assertion, I find Miss Chapa no more responsible for the entire home's cleaning than Ms. Heykants.

28. First, the room cleaning. Miss Chapa in part relies on a September 30, 2020 text message exchange with a third party L. Miss Chapa asked L if they knew if Ms. Heykants was returning to clean and noted that Ms. Heykants had left "stuff" behind and that Miss Chapa could post it for free if she did not return to get it. L copied Miss Chapa's message in a message to Ms. Heykants, who replied to L "she can sell whatever is there, not coming to clean". I find this text exchange does not show that Ms. Heykants had not cleaned at all. Rather, it only shows she was not coming back again to clean. There are no witness statements in evidence to support Miss Chapa's disputed claim that Ms. Heykants failed to clean. I find Miss Chapa has not proved Ms. Heykants failed to reasonably clean before she moved out.

29. Given the text with L above, I also find Miss Chapa cannot successfully claim hauling costs when she offered, through L, that she would dispose for free any goods left behind, which undisputedly was limited to the broken bookshelf and patio loveseat. I find the description of leftover garbage and food insufficiently specific to conclude any compensation is warranted, even if I found Ms. Heykants had left them behind.

30. Given my conclusion above, I do not need to address Miss Chapa's claimed damages. I find Miss Chapa has not proved Ms. Heykants failed to clean, other than the stained carpet which I address separately below. I dismiss the $175 claim.

Whether Ms. Heykants owes $500 in damages plus $130 for carpet cleaning

31. Miss Chapa claims reimbursement of $500 in "damages" and $130 for carpet cleaning. The evidence shows Miss Chapa agreed to pay the property manager the $500 plus $240.60 for carpet cleaning in mid-October 2020, after Miss Chapa ended the lease early. The property manager deducted these amounts before returning the deposits' balance to Miss Chapa. The property manager's carpet cleaning invoice indicates the whole house was cleaned. It is unclear how Miss Chapa arrived at $130, to be paid by only Ms. Heykants, out of the $260.40.

32. I accept Ms. Heykants' bedroom carpet was stained, which she does not particularly dispute. However, that was only one room out of the whole house. I do not agree that Ms. Heykants should pay ½ the full carpet cleaning bill, when under the rental agreement there were up to 4 tenants. I have insufficient evidence about the number of occupants at the tenancy's end. I find the most reasonable outcome is for Ms. Heykants to be responsible for a ¼ share of the $260.40, or $65.10.

33. As for the $500 in "damages", the move-out inspection report shows this was for "damage carpet, breaking lease, missing items". As noted, Miss Chapa was the one who ended the lease with the landlord. Other than the carpet stains, Ms. Heykants' bedroom was noted on the report to be clean. There were other carpet stains noted on the report. While Miss Chapa alleges Ms. Heykants' animals damaged other parts of the house, in the absence of witness statements I find Miss Chapa's assertions

and the submitted photos do not prove Ms. Heykants is solely responsible for the alleged damage.

34. On balance, similar to my conclusion above about utilities, I find the most reasonable outcome is that Ms. Heykants is responsible for ¼ of the $500 charge, or $125. Together with the carpet cleaning, I find Ms. Heykants owes $190.10 for these items.

Whether Ms. Heykants owes $766.67 for her September 2020 rent.

35. Ms. Heykants admits she did not pay the September 2020 rent of $766.67, and just says Miss Chapa kept her damage deposit. I find Ms. Heykants owes the claimed $766.67, and will address the relevant set-off below for the damage deposit.

Whether Ms. Heykants owes $1,533.34 on lost rent for September 2020, because 2 other tenants refused to stay

36. Miss Chapa claims $1,533.34, for 2 months of lost rent at $766.67 per month. Miss Chapa alleges the tenant CL moved out early, and another tenant S chose not to move in, due to Ms. Heykants' alleged disruptive behaviour.

37. I do not accept Miss Chapa's unsupported assertions that anything Ms. Heykants said or did caused the tenants to decide not to live in the house. The text messages with third parties, submitted by Miss Chapa, do not establish her claim. I find no legal basis to hold Ms. Heykants responsible for those tenants' decisions, even if Ms. Heykants was candid with them about the household conflict or advised them that there may be only a month left on the lease. I dismiss this $1,533.34 claim.

Whether Ms. Heykants owes $150 for a broken wood statue.

38. Miss Chapa claims $150 for an old wooden statute she says Ms. Heykants broke. Ms. Heykants says a third party broke the statute in October 2019, and that Miss Chapa filed a claim about it. Miss Chapa did not deny she filed that claim. Ms. Heykants submits that she accidentally knocked the broken statute over when moving out, and it broke more. In reply, Miss Chapa says the statute was in "good condition", and denies it could have broken as Ms. Heykants describes.

39. On balance, given the above I find the statute was likely already broken when Ms. Heykants admittedly accidentally knocked it over and broke it further. I do not accept Ms. Heykants deliberately broke the statute, as alleged. I find Miss Chapa has not proved Ms. Heykants was negligent, but even if she was, I find Miss Chapa has not proved the statute's value with any supporting evidence. I dismiss the $150 claim.

Set-off, interest, fees & expenses

40. Miss Chapa says Ms. Heykants only paid a $383.50 damage deposit in October 2019. Ms. Heykants did not submit any supporting documentation that she paid Miss Chapa more than that. Added to the $185.91 paid pet deposit, I find Ms. Heykants paid Miss Chapa $569.41 total in deposits. It is undisputed Miss Chapa never refunded Ms. Heykants any of the $1,559.84 deposits refund Miss Chapa received from the property manager around mid-October 2020.

41. I have found above Ms. Heykants owes $214.09 for the pet deposit, $108.65 for utilities, $190.10 for carpet cleaning and her share of the landlord's "damages" charge, and $766.67 for September 2020 rent. This totals $1,279.51. After deducting the $569.41 set-off for the paid deposits, I find Ms. Heykants owes $710.10.

42. The *Court Order Interest Act* (COIA) applies to the CRT. I find Miss Chapa is entitled to pre-judgment interest under the COIA on the $710.10, calculated from October 15, 2020, a date I consider reasonable given the tenancy's end. This equals $1.47.

43. 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. Miss Chapa was partially successful. I find she is entitled to reimbursement of ½ her paid $175 in CRT fees, or $87.50. Neither party claims dispute-related expenses, so I make no order about them.

ORDERS

44. Within 30 days of this decision, I order Ms. Heykants to pay Miss Chapa a total of $799.07, broken down as follows:

a. $710.10 in debt,

b. $1.47 in pre-judgment interest under the COIA, and

c. $87.50 in CRT fees.

45. Miss Chapa is entitled to post-judgment interest, as applicable. I dismiss Miss Chapa's remaining claims.

46. 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.

47. 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.

Shelley Lopez, Vice Chair