



Civil Resolution Tribunal

Date Issued: April 26, 2021

File: SC-2020-008773

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. Gosman*, 2021 BCCRT 430

BETWEEN:

DEBORAH ROBERTSON

APPLICANT

AND:

HEIDI GOSMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a short term rental.
2. The applicant, Deborah Robertson, rented a room in her house to the respondent, Heidi Gosman, for 9 weeks. Ms. Robertson says Ms. Gosman did not pay the rent in full, used her household supplies, and damaged or took her property. Ms. Robertson

seeks \$750 for unpaid rent and use of household items, \$250 for damage to flooring, and \$80 for items that she says are missing or damaged.

3. Ms. Gosman denies Ms. Robertson's claims. She says she paid the rent in full and denies she caused any damage. She also says Ms. Robertson gave one of the alleged missing items, a lantern with batteries, to Ms. Gosman's daughter and that she tried to return it to Ms. Robertson. Ms. Gosman admits her cat damaged a string of lights but says Ms. Robertson refused to accept the new ones she purchased to replace them.
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. 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.
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's owner.
10. The parties shared the kitchen during the term of the rental and so I find that this claim is within the CRT's small claims jurisdiction under section 118 of the CRTA.

Late evidence

11. Both parties submitted late evidence. However, I find each party had the opportunity to respond to the other's late evidence in their submissions, so neither party would be prejudiced by admitting the late evidence. So, I have admitted and reviewed the late evidence and considered it in my decision.

ISSUES

12. The issues in this dispute are:
 - a. Whether Ms. Gosman owes unpaid rent and if so, how much,
 - b. Whether Ms. Gosman is responsible for the damaged floor or carpet, and
 - c. Whether Ms. Gosman must pay Ms. Robertson for the alleged missing and damaged items.

EVIDENCE AND ANALYSIS

13. In this civil claim, the applicant Ms. Robertson bears the burden of proof on a balance of probabilities. I only address the evidence and arguments to the extent necessary to explain my decision.
14. Ms. Robertson has a basement suite she used for short term rentals. In July 2020, she agreed to rent it to Ms. Gosman to live in with her 2 children and 1 cat starting in mid-August. When Ms. Gosman arrived, she brought 3 cats instead of one. Ms. Robertson agreed to let the extra 2 cats remain but only until Ms. Gosman could find them new homes. Also, due to the extra cats, Ms. Gosman agreed to stay in a sunroom in Ms. Robertson's house instead of the basement suite. The parties agree Ms. Gosman removed the cats in September.
15. The parties agree that Ms. Gosman stayed from August 17, 2020 to October 15, 2020. During this time, Ms. Robertson also rented a room in her house to Ms. Gosman's friend, SW, to live in with her 3 children and 2 dogs. Ms. Robertson's brother, DM, who owned a pit bulldog, also stayed in Ms. Robertson's house for several weeks during this time.
16. Ms. Gosman initially stayed in the sunroom for 2 weeks but then moved to the basement suite while her parents were visiting. Two weeks later she moved back to the sunroom with her children and cats so that DM could move into the basement suite. She remained in the sunroom until she moved out.

Unpaid rent

17. The parties did not have a written rental or residency agreement. Ms. Robertson says Ms. Gosman initially agreed to pay \$350 per week for the basement suite for herself, 2 children, and 1 cat and agreed to assist with household chores and yard work. She says when Ms. Gosman arrived with 3 cats instead of 1, the parties agreed Ms. Gosman would stay in the sunroom for \$225 per week, and this would be reduced to \$200 per week while the children stayed with their father. She says Ms. Gosman gave away 2 cats and on September 20, Ms. Gosman agreed to pay \$225 per week for

herself, 2 children, and 1 cat to stay in the sunroom since Ms. Gosman was not assisting with house or yard work.

18. Ms. Robertson submitted several screenshots of her calendar that contained her notes about the amount of rent Ms. Gosman owed. I find these screenshots do not prove Ms. Gosman agreed to pay the amount stated in the notes and so I give them no weight.
19. Ms. Robertson also submitted a written statement from her friend, TB, about the rental arrangement between the parties. I find TB's testimony is mostly hearsay since she discussed conversations between the parties that she obviously was not part of. 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, including hearsay evidence. I find much of TB's testimony is based on discussions between herself and Ms. Robertson and so are not reliable. For this reason, I give TB's statement little weight.
20. Ms. Gosman says the parties agreed to \$200 per week for the basement suite plus she would assist with the house and yard work. She says the amount stayed the same for the sunroom. Ms. Gosman says she regularly assisted with cleaning the house and yard work such as removing weeds and trimming hedges.
21. I find Ms. Robertson agreed to rent the basement suite to Ms. Gosman for \$200 per week and she would assist with house and yard work. I say this because in a September 16, 2020 text message Ms. Robertson stated \$800 per month was killing her. I find this meant that although she was not happy with the amount, Ms. Robertson had agreed to \$800 per month. I find \$800 per month is equivalent to \$200 per week, since a month typically has 4.3 weeks (52 weeks per year divided by 12 months per year).
22. This text message was sent while Ms. Gosman was staying in the basement suite and is consistent with Ms. Gosman's allegation that she agreed to pay \$200 per week

for the basement suite. I find if the rent was higher, Ms. Robertson would likely have stated the arrears in the text message.

23. As mentioned above, the burden is on Ms. Robertson to prove her claim. I find there is no independent evidence that Ms. Gosman agreed to increase the rent to \$225 per week on September 20, 2020 and so I find the rent remained at \$200 per week.
24. The parties disagree about whether Ms. Gosman assisted with house and yard work. I find Ms. Robertson has not proved her allegation and there is no persuasive evidence either way. I find neither TB nor DM's statements helpful. While they stated the house and yard were messy, the witnesses were not present during the entire rental period and so would not know whether Ms. Gosman assisted at other times.
25. I find Ms. Gosman stayed in Ms. Robertson's house for 9 weeks. At \$200 per week, I find the total rent during Ms. Gosman's stay was \$1,800. Ms. Robertson says Ms. Gosman still owes \$900. Ms. Robertson says Ms. Gosman acknowledged this in an October 16, 2020 text message. Ms. Gosman says she only stated she would check her records and did not agree that she owed \$900. She says after checking her records, she concluded she still owed \$200. I agree with Ms. Gosman that she only agreed she still owed money for rent but not the actual amount.
26. Ms. Gosman's records show in total she e-transferred \$1,521.50 to Ms. Robertson from August 20 to November 19. Ms. Gosman says \$1,400 of that amount was for rent. Ms. Gosman did not explain what the remaining \$121.50 was for. Ms. Robertson says \$150 of the amount Ms. Gosman paid her was for an iPhone. I find this is consistent with Ms. Gosman's claim that \$1,400 was for rent.
27. Given the above, I find Ms. Gosman paid Ms. Robertson \$1,400 for rent. So, I order Ms. Gosman to pay Ms. Robertson \$400 for rent.

Damaged flooring and carpet

28. Ms. Robertson seeks \$250 for damage to her laminate floor and carpeted stairs. She says water from Ms. Gosman's cat water fountain damaged the wood laminate flooring in the sunroom and leaked onto a light fixture on the floor below. Ms. Robertson submitted several photographs of her wood laminate flooring that appears to be slightly warped. She also submitted photographs of a light fixture. Ms. Robertson did not state how the water affected it. Ms. Robertson says it will cost \$1,000 to \$3,000 to replace the laminate. She did not submit an estimate or invoice.
29. Ms. Gosman denies the damage was from the cat water fountain and says she kept it 10 feet away from the warped area. This is consistent with a written statement from SW who stated Ms. Robertson showed her the damaged flooring and that she did not recall the cat water fountain being kept in that spot.
30. Ms. Gosman says the damage in the sunroom was from water seeping from the nearby patio doors. Ms. Gosman also says Ms. Robertson's brother, DM, stayed with his pit bulldog in the sunroom and water from the dog's water dish could have damaged the flooring.
31. I find I cannot determine the cause or extent of the water damage from the photographs. I could not see any noticeable damage to the light fixture. I find Ms. Robertson has not proved the alleged water damage to either the flooring or the light fixture was caused by the cat water fountain and so I dismiss this aspect of Ms. Robertson's claim.
32. Ms. Robertson also says Ms. Gosman spilled coffee on her carpeted stairs. Ms. Robertson submitted photographs of the stairs showing light spots. Ms. Gosman says she made her coffee upstairs in her room using a Keurig and so denies she carried coffee on the stairs. Again, Ms. Robertson has not met her burden of proof that Ms. Gosman damaged the carpet and so I dismiss this aspect of her claim.

Missing or damaged property

33. Ms. Robertson seeks \$35 for a battery operated lantern and \$10 for batteries that she says Ms. Gosman took. She also seeks \$35 for string lights that Ms. Gosman's cat damaged. Ms. Robertson submitted an advertisement from an online store showing a set of 2 lanterns cost \$34.11 and the string lights cost \$35.
34. Ms. Gosman she says Ms. Robertson gave the lantern and batteries to her daughter as a gift. While she acknowledges her cat damaged the string lights, she says they only cost \$20. Ms. Gosman says she purchased a new set of string lights and tried to return all 3 items but Ms. Robertson refused to accept them. Ms. Gosman says she is prepared to return the lantern and batteries and pay \$20 for string lights.
35. Since Ms. Gosman is prepared to return the lantern and batteries, I find the items were not a gift. Given the value of the items, I find Ms. Robertson is entitled to \$17.05 for the lantern and \$35 for the string lights. Since Ms. Robertson did not provide the cost of the batteries, on a judgement basis I award \$5. In total, I order Ms. Gosman to pay Ms. Robertson \$57.05 for these items.
36. Ms. Robertson also says Ms. Gosman's cats scratched and soiled a new area rug she had left for Ms. Gosman to use. Again, Ms. Gosman denies her cats were responsible for the damage. She says the damage was likely caused by the 5 dogs that were living in Ms. Robertson's house at the time. She says the sunroom was accessible to the pets in the house.
37. Ms. Robertson submitted several photographs of the area rug. Although I cannot see any damage, I accept it was there since Ms. Gosman did not contest it. However, I find that since other pets in the house had access to the sunroom, Ms. Robertson has not proved the damage was caused solely by Ms. Gosman's cats.

Other claims

38. Ms. Robertson says Ms. Gosman used her toilet paper, cleaning supplies, freezer bags, and coffee until she objected in early September. I infer these items come under

the category of “household supply” in Ms. Robertson’s Dispute Notice. Ms. Gosman did not deny she used these items or state they were included as part of the rental and so I find that Ms. Gosman used these items for 2 to 3 weeks. Since Ms. Robertson did not state the value of these items, on a judgement basis, I award Ms. Robertson \$30.

39. Ms. Robertson also mentioned several additional complaints in her submissions. I find I do not need to address these complaints since Ms. Robertson did not make a claim for damages.
40. Ms. Robertson also submitted several text messages and emails that she says were from people interested in renting her basement suite on AirBNB. I infer the purpose was to show she lost income while Ms. Gosman was staying in the sunroom. Since Ms. Robertson did not make a claim for income loss, or explain how Ms. Gosman’s presence in the sunroom could affect renting the basement suite, I make no finding about this evidence.
41. Ms. Robertson requests in her submissions that an additional \$550 be added to any award for damages in the event that Ms. Gosman does not pay Ms. Robertson in full “within an agreed upon deadline”. I infer Ms. Robertson meant by the date in any order for damages. This was not mentioned in the Dispute Notice.
42. Even if Ms. Robertson had included this claim in the Dispute Notice, I would still dismiss it. I find Ms. Robertson’s claim is essentially for a penalty for an anticipated failure to comply with a CRT order. Neither the CRTA or the tribunal rules provide for such speculative penalties.

INTEREST, CRT FEES AND DISPUTE-RELATED EXPENSES

43. The *Court Order Interest Act* applies to the CRT. Ms. Robertson is entitled to pre-judgment interest on the \$430 from October 16, 2020 the date Ms. Robertson asked for payment, to the date of this decision. This equals \$1.02.

44. 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. Since Ms. Robertson was partially successful, I find she is entitled to reimbursement of 50% of the \$125 she paid in CRT fees, which is \$62.50. She did not claim dispute-related expenses.

ORDERS

45. Within 14 days of the date of this order, I order Ms. Gosman to pay Ms. Robertson a total of \$555.57, broken down as follows:

- a. \$400 in debt,
- b. \$87.05 in damages,
- c. \$1.02 in pre-judgment interest under the *Court Order Interest Act*, and
- d. \$67.50 in CRT fees.

46. Ms. Robertson is entitled to post-judgment interest, as applicable.

47. I dismiss Ms. Robertson's remaining claims.

48. 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.

49. 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.

Rama Sood, Tribunal Member