



# Civil Resolution Tribunal

Date Issued: April 29, 2021

File: SC-2020-009907

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lemniy v. Gong*, 2021 BCCRT 451

BETWEEN:

EVA LEMNIY

**APPLICANT**

AND:

CHENXI GONG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

### INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant, Eva Lemniy, claims \$1,000 for the return of security and pet deposits (together, the deposits) she paid to the respondent, Chenxi Gong.

3. Ms. Gong denies Ms. Lemniy is entitled to the deposits' return. She says she is entitled to keep the deposits because Ms. Lemniy did not give her enough notice before moving out, Ms. Lemniy's cat caused damage to Ms. Gong's furniture, and Ms. Lemniy owes her for unpaid utilities.
4. Both parties are 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. 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 demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
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.
9. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as those decisions are within the jurisdiction of the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* does not apply to this dispute because the RTB refuses jurisdiction over “roommate disputes”, such as this one. For that reason, I find this dispute is within the CRT’s small claims jurisdiction, set out in CRTA section 118.

## **ISSUE**

10. The issue in this dispute is whether Ms. Gong is entitled to keep some or all of the deposits.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant, Ms. Lemniy, must prove her claims on a balance of probabilities. I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The following facts are undisputed:
  - a. In February 2019, Ms. Lemniy moved into a two-bedroom apartment leased by Ms. Gong.
  - b. The parties shared a kitchen and other common areas.
  - c. Ms. Lemniy paid Ms. Gong a security deposit of \$500 and a pet deposit of \$500.
  - d. There was no written tenancy agreement between the parties.
  - e. On December 4, 2019, Ms. Lemniy texted Ms. Gong saying she intended to move out at the end of the month.

- f. Ms. Lemniy moved out of the apartment on December 26, 2019.
- g. Ms. Gong has not returned the deposits to Ms. Lemniy.

### ***The agreement***

13. The parties' rights and obligations are governed solely by their agreement. As there was no written agreement, I must determine, based on the evidence, the terms of the parties' verbal agreement. While a verbal agreement is still enforceable, it is harder to prove than if it had been in writing.
14. The parties disagree about how much rent Ms. Lemniy was required to pay to Ms. Gong. There is a February 10, 2019 handwritten receipt in evidence. Based on this receipt, I find the parties agreed that Ms. Lemniy would pay \$1,000 "inclusive" for rent on the first of every month. Ms. Gong submits that she only agreed to \$1,000/month because Ms. Lemniy was also going to help take care of Ms. Gong's dog. Ms. Gong says that by May 2019, she started taking her dog to work and Ms. Lemniy did little to help with the dog. Ms. Lemniy says that she took care of the dog and was never paid for doing so. I find that nothing turns on this. The evidence shows that Ms. Lemniy continued to pay \$1,000/month for rent while she lived with Ms. Gong and there is no evidence that the parties ever agreed to change this amount. I find the parties agreed Ms. Lemniy would pay \$1,000/month for rent.
15. In the Dispute Notice and later submissions, Ms. Lemniy admits that after she moved in, she agreed to pay for utilities in addition to the \$1,000 rent. Based on the parties' text messages, I find that Ms. Lemniy agreed to pay for half of the utilities.
16. Ms. Gong says that the parties also had a verbal agreement that Ms. Lemniy would give her notice at least the month before she wanted to move out. I disagree. There is no evidence to show the parties had a verbal agreement about how much notice was required.
17. When Ms. Lemniy told Ms. Gong on December 4, 2019 that she intended to move out at the end of the month, Ms. Gong did not say that Ms. Lemniy's notice was late.

I find the December 4, 2019 text messages show that Ms. Gong did not believe there was an agreement about how much notice Ms. Lemniy had to give. The evidence shows that Ms. Gong did not mention the notice was late until December 23, 2019. I find that the parties had no agreement setting out the minimum required notice terms. Therefore, it was an implied term of the agreement that Ms. Lemniy would give Ms. Gong reasonable notice. In the circumstances, I find Ms. Lemniy's 3 week notice was reasonable.

***Is Ms. Gong entitled to keep any part of the deposits?***

18. As mentioned above, Ms. Gong says she is entitled to keep the deposits because Ms. Lemniy gave late notice, failed to pay for her share of the utilities for November and December, and her cat damaged Ms. Gong's couch, computer chair and mattress. The burden is on Ms. Gong to prove the amounts she is entitled to deduct from the deposits.
19. Since I have found that Ms. Lemniy's 3 week notice to move out was reasonable, I find that no amount should be deducted from the deposits for any losses Ms. Gong says she incurred due to the timing of the notice.
20. As for the utilities, since I have found that Ms. Lemniy agreed to pay for half of the utilities, I find that any unpaid utilities for November and December must be deducted from the deposits.
21. Ms. Gong relies on a February 29, 2020 Novus invoice which she says shows the monthly cost of internet. However, it is not clear from the evidence or the submissions how much Ms. Gong claims Ms. Lemniy owed for the internet charges. I find this invoice does not reliably show what the internet charges were for November and December 2019. As such, I find that no deductions should be made from the deposits for the internet charges.
22. Ms. Gong provided evidence showing that she paid \$87.24 on November 19, 2019 and \$94.54 on December 18, 2019 for water and sewage charges. Further, the evidence shows that Ms. Gong paid a BC Hydro invoice on December 11, 2019 for

\$93.42. Ms. Gong also provided a \$79.19 BC Hydro invoice for the time period of November 20, 2019 to January 17, 2020. Ms. Lemniy says she paid for utilities starting from February 2019. However, I see nothing in the evidence to show that Ms. Lemniy paid for her share of these particular charges.

23. Therefore, I find that Ms. Lemniy owed Ms. Gong \$90.89 for half of water and sewage charges and \$71.54 for her share of the BC Hydro invoices (with the January 2020 invoice pro-rated to account for the fact that Ms. Lemniy moved out on December 26, 2019) for a total of \$162.43
24. I turn now to Ms. Gong's claims about damage caused by Ms. Lemniy's cat. In the parties' text messages, Ms. Lemniy acknowledged her cat may have caused some damage to Ms. Gong's couch. However, she says that Ms. Gong's and her previous roommate's dogs also contributed to the damage.
25. I have reviewed the photographs provided by the parties as well as the text messages between them discussing the alleged damage to the couch, chair and mattress. Based on the evidence, I find that there was damage to the couch and chair after Ms. Lemniy moved in. I find it is likely that Ms. Lemniy's cat did cause some but not all of the damage to the couch and chair.
26. Ms. Gong says she paid \$1,900 for the couch. However, I find that the evidence shows she bought the couch for \$1,119.97 on September 20, 2017. Ms. Gong says that she was able to sell the couch for \$300. Ms. Gong also provided an email from a furniture repair company stating that the couch could not be repaired. On a judgment basis, taking into account the couch's original value, I find \$300 is an appropriate deduction for the damage to the couch by Ms. Lemniy's cat.
27. As for the chair, Ms. Gong submits she paid \$100 for the chair whereas in her December 23, 2019 text message to Ms. Lemniy, she said she paid \$70. On a judgment basis, I find \$30 is an appropriate deduction for the damage to the chair by Ms. Lemniy's cat.

28. There is no evidence of the damage to Ms. Gong's mattress aside from the text messages that she sent to Ms. Lemniy saying the cat urinated on the mattress. I find that Ms. Gong has failed to prove any loss in relation to the mattress and I do not deduct any amount for this.
29. In summary, I find Ms. Lemniy is entitled to a refund of \$507.57 from the remaining deposits (\$1000 minus \$162.43 for unpaid utilities and minus \$330 for the damage caused by Ms. Lemniy's cat).
30. The *Court Order Interest Act* applies to the CRT. Ms. Lemniy is entitled to pre-judgment interest on the \$507.57 from December 26, 2019 to the date of this decision. This equals \$6.99.
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. I see no reason in this case not to follow that general rule. As Ms. Lemniy was partially successful, I order Ms. Gong to reimburse Ms. Lemniy for half of the CRT fees paid, or \$62.50. Ms. Lemniy did not claim dispute-related expenses.

## **ORDERS**

32. Within 14 days of the date of this order, I order Ms. Gong to pay Ms. Lemniy a total of \$577.06, broken down as follows:
  - a. \$507.57 in debt as reimbursement for the deposits,
  - b. \$6.99 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
33. Ms. Lemniy is entitled to post-judgment interest, as applicable.
34. 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.

35. 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.

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Nav Shukla, Tribunal Member