



# Civil Resolution Tribunal

Date Issued: May 20, 2021

File: SC-2020-008064

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wells v. Stetsko*, 2021 BCCRT 545

BETWEEN:

CRYSTAL WELLS

**APPLICANT**

AND:

KIM STETSKO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This is a dispute between former roommates. The applicant, Crystal Wells, sub-leased space in a 2-bedroom apartment from the respondent, Kim Stetsko. Ms. Wells says Ms. Stetsko forced her to move out early, in breach of their agreement. Ms.

Wells says she suffered financial losses from having to move out on short notice. Ms. Wells claims \$2,108.60, made up of \$500 for the return of her damage deposit, a \$386.67 refund of paid rent, \$880 for accommodation expenses, \$66.13 for unreturned personal items, and \$275.80 for Uber expenses (food and transportation). Ms. Wells also claims an additional \$650 for legal fees.

2. Ms. Stetsko says that Ms. Wells chose to move out early, in breach of their agreement to give one month's notice. Ms. Stetsko says she withheld the damage deposit to help cover the last month's rent that Ms. Wells failed to pay and denies that she is responsible for any of the claimed refunds or expenses.
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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. 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 assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized

that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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 those decisions are within the jurisdiction of the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* does not apply here 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.
9. Ms. Wells submitted 3 items of evidence after the deadline, including a receipt for returning her keys, a copy of her previous lease, and a list of furnishings from her previous lease. Ms. Wells says she provided this evidence in response to Ms. Stetsko's submissions. While Ms. Stetsko had the opportunity to provide submissions on the late evidence, I find the late evidence is not relevant to the issues in this dispute, so I decline to admit it.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether either party breached the sublease agreement.
  - b. Whether Ms. Wells is entitled to the claimed compensation.

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Wells must prove her claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to what is necessary to provide context for my decision.
12. The parties agree about very little in this dispute, and many of their submissions directly contradict each other's. However, it is undisputed that Ms. Wells subleased space in a 2-bedroom apartment from Ms. Stetsko. It is also undisputed that the parties both understood Ms. Wells' tenancy was not intended to be long-term, as Ms. Wells had moved from outside BC and planned to find her own accommodation. The parties also agree that they had a written sublease agreement. In fact, there are 2 sublease agreements between the parties in evidence.
13. The first sublease, signed on June 4, 2020, was for a fixed term from July 1, 2020 to September 30, 2020. It stated that Ms. Wells would pay a \$500 deposit upon signing the agreement, and the evidence shows she paid that sum. While the sublease stated that Ms. Wells would pay \$1,500 per month in rent, the parties agree that Ms. Wells paid \$1,450 in rent, which I find is supported by the evidence.
14. Ms. Wells says that on September 13, 2020, she told Ms. Stetsko she had found her own apartment for October 1. Ms. Wells says that Ms. Stetsko was upset by this because she was concerned about finding another tenant. So, Ms. Wells says she agreed to stay until October 31, prompting the parties to sign a second sublease agreement. Ms. Stetsko does not specifically deny any of this. I also accept Ms. Wells' evidence that she agreed to stay the extra month on the condition that Ms. Stetsko limit the number of guests in the apartment for the duration of her lease, due to Ms. Wells' concern about rising COVID-19 infection rates.
15. The second sublease was signed on September 14, 2020. It provided for the same initial tenancy term from July 1, 2020 to September 30, 2020, after which it converted to a month-to-month tenancy. It stated the rent was \$1,450 per month, payable on the last day of each month for the following month. It also provided that if either the

tenant or landlord wanted to end the tenancy, they must provide 1 calendar month's written notice. However, I find Ms. Stetsko already knew that Ms. Wells was moving out on October 31, 2020 when she signed the second sublease.

16. The evidence shows that the parties' relationship deteriorated around September 20, 2020. Both parties allege the other's behaviour became erratic and disrespectful. The evidence shows that conflict arose about the number of guests Ms. Stetsko continued to invite into the apartment. Ultimately, Ms. Stetsko sent Ms. Wells several text messages on September 20 stating: "move out", and later: "I request you get a hotel room and move out immediately", and: "You are no longer welcome to live here".
17. Ms. Wells alleges that while she was at work on September 22, Ms. Stetsko entered her bedroom, went through her personal belongings, and removed several things. Ms. Stetsko admits she removed items she had lent to Ms. Wells, including bedding, towels, hangers, and a laundry basket. Ms. Stetsko also sent Ms. Wells a September 22 email, which stated it was 30 days' notice for Ms. Wells to vacate the property by October 31. The email also said that Ms. Stetsko would no longer permit Ms. Wells to use any of her personal items (including kitchen wares).
18. Ms. Wells says she felt unsafe continuing to live in the apartment with Ms. Stetsko. She says that after work on September 23, she and a friend went to the apartment and removed most of her belongings. Ms. Wells then found alternative housing until she could move into her new place.

***Who breached the sublease agreement?***

19. Both parties allege the other breached their sublease agreement. Ms. Stetsko says that by moving out on September 23 rather than October 31, Ms. Wells failed to give the required one months' notice. Ms. Wells says she was forced to move out early because Ms. Stetsko told her to leave and she felt unsafe living with Ms. Stetsko.
20. While the sublease agreement is short and has few express terms, written agreements can also have implied terms. Because it is an agreement to provide a place for Ms. Wells to live, I find the agreement included implied terms that Ms. Wells

would have quiet enjoyment of her room and the shared areas, and that the parties would treat each other with respect and not engage in behaviour that would make the other party feel unsafe.

21. On the evidence before me, I find that Ms. Stetsko breached the parties' sublease agreement by failing to respect Ms. Wells' request to restrict guests in the apartment, and by invading Ms. Wells' privacy when she went through her personal belongings. I also find that Ms. Stetsko's September 20, 2020 text messages telling Ms. Wells to move out and then restricting Ms. Wells' use of the kitchen and shared amenities reasonably made Ms. Wells feel unwelcome and unsafe, in breach of their agreement. I find these breaches entitled Ms. Wells to terminate the second sublease agreement and end her tenancy without providing one month's notice.
22. I turn to Ms. Wells' claimed damages.

***Damage deposit***

23. Under both sublease agreements, Ms. Stetsko agreed to reimburse the \$500 damage deposit to Ms. Wells within 3 business days of termination of sublease term, so long as no damage was done. Ms. Wells also agreed that any unreasonable damage she caused would be deducted from the damage deposit.
24. Ms. Wells provided photos she took the night she moved out, which I find show she left her space tidy, with no evidence of any damage. Ms. Stetsko provided photos showing that some minor surface cleaning may have been required in the bedroom and bathroom. There is also one photo of scratches on Ms. Wells' door frame, which Ms. Wells says were pre-existing. Even if the scratches were not pre-existing, I find they are normal wear and tear. I find there is no evidence of "unreasonable damage" in the apartment that would justify Ms. Stetsko withholding reimbursement of the damage deposit. Further, as I have found Ms. Wells was entitled to terminate the sublease early, I find Ms. Stetsko was not entitled to keep the deposit to off-set unpaid rent for October. I find Ms. Stetsko must reimburse the \$500 deposit.

### ***Rent refund***

25. It is undisputed that Ms. Wells paid \$1,450 in rent for the entire month of September 2020. Ms. Wells says that Ms. Stetsko changed the locks on September 24, preventing her from accessing the apartment between September 24 and 30, 2020, which Ms. Stetsko denies. Ms. Stetsko says she did not change the locks until October 1, after confirming that Ms. Wells had not paid October's rent.
26. Ms. Wells submitted police file notes made in response to Ms. Wells' report about Ms. Stetsko's alleged aggressive behaviour. The police notes show that Ms. Wells told them on September 27, 2020 that she had been unable to access the apartment on September 24 because Ms. Stetsko had changed the locks. Ms. Stetsko provided no evidence to support her position that the locks were not changed until October 1. I find the weight of the evidence supports Ms. Wells' submission that Ms. Stetsko changed the locks on September 24.
27. Given that Ms. Wells was unable to access the apartment from September 24 to 30, I find Ms. Stetsko was not entitled to keep the full amount of rent for September. I find Ms. Wells is entitled to a \$338.33 refund, which is the proportional amount of the monthly rent for the last 7 days of September.

### ***Accommodation expenses***

28. Ms. Wells provided evidence that she used short-term rental accommodation between September 24 and October 15, 2020, at \$40 per night, until she could move into her new place. Given that I have ordered Ms. Stetsko to refund Ms. Wells' rent from September 24 to 30, I find she is not also entitled to compensation for her accommodation costs during that period. Further, I find that if Ms. Stetsko had not breached the sublease agreement, Ms. Wells would have paid Ms. Stetsko rent for October. In other words, Ms. Wells would have incurred accommodation expenses in any event. So, I find Ms. Wells is not entitled to reimbursement of her short-term rental expenses. I dismiss this aspect of Ms. Wells' claim.

### ***Personal items***

29. It is undisputed that Ms. Wells left a cushion and an incense burner in the apartment, which have not been returned to her. I find Ms. Wells is entitled to reimbursement for these items, as I have found she was unable to gain entry to the apartment after September 23 to retrieve them. Ms. Stetsko confirmed on October 2, 2020 that she had the items, but it is unclear on the evidence whether Ms. Stetsko still has them. In any event, Ms. Wells does not seek their return and I find monetary compensation is appropriate in the circumstances.
30. Ms. Wells provided a receipt for the cushion showing she paid \$38.53. I order Ms. Stetsko to reimburse Ms. Wells this amount for the cushion.
31. Ms. Wells provided a bank statement showing a \$26.45 purchase, which Ms. Wells says is for the incense burner. However, there is no receipt confirming what was purchased. Ms. Stetsko describes the item as a “wood dollar store incense holder”. I find from Ms. Stetsko’s photo of the incense burner that it is unlikely it cost \$26.45. On a judgment basis, I find that \$5.00 is appropriate compensation for Ms. Wells’ incense burner.
32. I order Ms. Stetsko to pay Ms. Wells a total of \$43.53 for her unreturned items.

### ***Uber expenses***

33. Ms. Wells claims \$52.57 for Uber rides and \$223.23 for Uber take-out orders between September 20 and October 15, 2020. Ms. Wells says that she primarily used walking and biking for transportation, but that for the noted period she was in a state of shock and exhaustion, so was unable to walk or bike safely. While I acknowledge that the events surrounding the end of her tenancy were likely upsetting and inconvenient, I find there is insufficient evidence that Ms. Wells was so distraught or tired that she was incapable of walking or biking. I dismiss her claim for Uber rides.
34. As for her food claims, Ms. Wells submits that she lived with a couple during her short-term rental, and “out of respect for their home” limited her time in their kitchen. She



argues that take-out food costs significantly more than preparing food at home. However, I find Ms. Wells would have incurred some food expenses even if she was cooking at home, and she provided no evidence about the difference in cost. Further, while Ms. Wells may have felt uncomfortable using the kitchen in her short-term rental, I am not satisfied that this means Ms. Stetsko should be responsible for Ms. Wells' take-out costs. I dismiss Ms. Wells' claim for Uber take-out orders.

## **INTEREST, CRT FEES AND EXPENSES**

35. The *Court Order Interest Act* applies to the CRT. Ms. Wells is entitled to pre-judgment interest on the \$881.86 I have ordered, from September 29, 2020 (3 business days after Ms. Stetsko breached the sublease and Ms. Wells terminated the agreement) to the date of this decision. This equals \$2.54.
36. 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. Here, I find Ms. Wells was partially successful, so she is entitled to reimbursement of half her CRT fees, which is \$62.50.
37. Ms. Wells claims \$650 in legal fees. The evidence shows her lawyer sent Ms. Stetsko an October 2, 2020 demand letter for return of the damage deposit and personal items to Ms. Wells. These are some of the same issues before me in this dispute. However, it is unclear whether Ms. Wells' lawyer also assisted with her CRT application. The invoice states only that it is for "summary legal advice" without any further detail about the nature or timing of the advice. Nevertheless, under CRT rule 9.5(3), the CRT will only order a party to pay another party's legal fees as a dispute-related expense in extraordinary circumstances, and I find this dispute does not involve any extraordinary issues. I dismiss Ms. Wells' claim for legal fees.

## ORDERS

38. Within 14 days of the date of this decision, I order Ms. Stetsko to pay Ms. Wells a total of \$946.90, broken down as follows:
- a. \$881.86 for the damage deposit, rent refund, and compensation for personal items,
  - b. \$2.54 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$62.50 in CRT fees.
39. Ms. Wells is entitled to post-judgment interest, as applicable.
40. I dismiss Ms. Wells' remaining claims.
41. 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.

42. 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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Kristin Gardner, Tribunal Member