



Civil Resolution Tribunal

Date Issued: May 31, 2021

File: SC-2021-000288

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MM v. CW*, 2021 BCCRT 592

BETWEEN:

MM

APPLICANT

AND:

CW

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is the result of an unsuccessful roommate arrangement. The applicant, MM, rented a room to EW, who is a minor and the child of the respondent, CW. MM says that CW co-signed EW's roommate agreement, which had a 1-year term. EW

moved out of the home before the end of the term. MM claims \$2,579.39 in lost rent, liquidated damages, and cleaning and painting charges. CW admits that she co-signed the agreement, but denies that she is responsible for any of the claimed damages.

2. The parties are self-represented.
3. I have anonymized the published version of this decision in order to protect EW's identity.

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. 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.
6. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, section 4(c) of the *Residential Tenancy Act* (RTA) says that the RTA does not apply to accommodations in which a tenant shares bathroom or kitchen facilities with the accommodation's owner. So, the RTB refuses jurisdiction over roommate disputes. As MM shared kitchen and bathroom facilities with EW, I find that the RTA does not

apply. I am satisfied that this dispute is within the CRT's small claims jurisdiction, as set out in section 118 of the CRTA.

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. Some of the evidence MM submitted is in a language other than English. A certified translation was provided for portions of some text messages, as required by CRT rule 1.7(5). However, translations were not provided for the complete text messages or some rental postings that contain both English and non-English text. I am unable to consider the portions of evidence for which no English translations were provided.
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.

ISSUES

10. The issues in this dispute are:
 - a. Whether MM is entitled to damages of \$1,650 for lost rent from EW,
 - b. Whether MM is entitled to liquidated damages of \$100,
 - c. Whether MM is entitled to \$75 in cleaning charges,
 - d. Whether MM is entitled to \$387 in lost rent from another tenant, and
 - e. Whether MM is entitled to \$367.39 in painting costs.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant MM 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. MM and EW entered into their roommate agreement on June 19, 2020, using a pre-printed Residential Tenancy Agreement. CW acted as a co-signer and, in an addendum, agreed to take responsibility for and guarantee the "payment of rent and any monetary damages". The agreement was for a fixed term between July 1, 2020 and July 1, 2021, with the arrangement continuing on a month-to-month basis after that date. The agreement provided that the rent was \$750 per month until August of 2020, but it increased to \$780 per month in September of 2020. The parties also agreed on a \$30 monthly bike storage charge between September of 2020 and April of 2021. The agreement required a \$375 security deposit, which was paid on June 25, 2020.
13. MM and EW were not well suited as roommates. The parties agree that MM was not satisfied with the way EW cleaned the kitchen and bathroom. Translated text messages in evidence show that another tenant, MS, complained about EW's alarm ringing and stated that they felt "uneasy" being alone in the house with EW. Documents in evidence show that MS's rental arrangement was supposed to end in December. However, MS left the home in October due to what MM says were concerns about EW's behaviour.
14. MM wrote a letter to EW on November 7, 2020 to document complaints about his use of the laundry equipment, waste disposal, and noise levels. She asked EW to "solve the problems" and to compensate her for the \$387 loss of rental income she experienced as a result of MS ending their tenancy early.
15. In 2 separate letters dated November 15, 2020, EW advised MM that he would be moving out of the home on December 15, 2020, and removing his bicycle from the garage before December 1.

16. On November 18, 2020, MM completed an Information for Vacating Tenants form, which set out instructions for cleaning and the monetary charges for various cleaning infractions. MM signed this form, but EW and CW did not. Also on November 18, 2020, MM completed an Acknowledgment of Early end of Tenancy Notice, in which she confirmed that she received notice of ending the tenancy early, despite the fixed term not ending until July 1, 2021. In the form, MM stated that she would try to find a new tenant as soon as possible, but that “you will be responsible for any loss of rent I incur until the end of this term”.
17. On November 20, 2020, there was some sort of incident with one of EW’s guests that prompted MM to call the police. CW says that EW felt bullied as a result, and decided to leave the home before December 15, 2020.
18. EW moved out of the home on November 23, 2020. On that date, CW wrote to MM to advise that the “bedroom, bathroom and any storage areas of the house have been properly cleaned” and the “holes from the few nails/screws in his bedroom have been repaired properly”. CW stated that, as EW had given his 30 days’ notice on November 15, MM could keep the damage deposit “in lieu of the 2 weeks of rent from December 1-15”. The parties did not perform a move-out inspection together.
19. CW and MM spoke and exchanged email messages about what compensation MM would receive as a result of the early termination of the roommate arrangement. However, as shown in an audio recording and email messages in evidence, the parties were unable to come to an agreement.

Lost rent from EW

20. MM claims that she lost \$1,650 as a result of EW ending the roommate arrangement early. MM asks for compensation for the \$780 rent for December 2020 and January 2021, and for 3 months of the \$30 bike storage charge.
21. CW says that she is willing to pay the December rent, but asks that the \$375 deposit be deducted. She says that she should not be required to pay any additional amounts

as MM and EW agreed that they were not a good fit as roommates yet MM refused to come to a mutual agreement to end the arrangement or negotiate a settlement.

22. The parties' agreement does not contain a clause that allowed MM or EW to terminate the agreement unilaterally if they did not get along as roommates. Further, nothing in the parties' agreement required MM to consent to end the tenancy early given its fixed term. Even if she initially was willing to negotiate different terms, I find MM is entitled to the compensation set out in the parties' agreement.
23. According to the agreement's terms, the notice to vacate given on November 15 would take effect on December 31, 2020, not December 15. I agree that, under the agreement, MM is entitled to the \$780 rent and \$30 bike storage fee for the entire month of December 2020, for a total of \$810.
24. I find that MM is entitled to damages for any rent she lost as a result of EW's early termination of the roommate agreement. However, as noted above, MM bears the burden of proving her claims.
25. MM provided copies of online postings she made to advertise for a new roommate. Some of these postings are dated in November and December of 2020, but not all of the postings contain dates and some are not in English. The postings do not contain any dates in January of 2021 and it is not clear how long these postings remained active.
26. Although MM says she has a new roommate, she did not provide evidence about when the new roommate arrived or what rent or storage fees they paid between their arrival and the expiry of EW's agreement. Significantly, the evidence does not show that the new roommate's payments started after January of 2021 or that they paid less than what EW was paying. Based on the evidence before me, I find that MM has not established that she sustained any loss after December 2020.
27. Turning to the matter of the \$375 deposit, I note that the parties sometimes refer to this as a damage deposit. It is clear from the agreement that the \$375 was a security deposit and, under clause 7(c) of the agreement, it was to be returned within 15 days

of the end of the agreement unless EW or CW agreed in writing to allow MM to keep it for unpaid rent. CW advised MM in a December 2, 2020 email that she could keep the deposit for rent purposes. While I acknowledge MM's submission that she has not consented to the deposit being used for rent, I find that it is appropriate to order that the \$375 deposit be set off against the outstanding rent.

28. Deducting the \$375 deposit from the \$810 owing equals \$435, which I order CW to pay to MM.

Liquidated Damages

29. Clause 5 of the parties' agreement provides that if EW left the home before the end of the fixed term, MM would be entitled to \$100 in liquidated damages. The agreement specifically stated that the payment of these damages would not preclude MM from claiming "future rental revenue losses".

30. Although she expressed no opinion about MM's entitlement to liquidated damages in her Dispute Response, CW stated in her submissions that she would be "happy to pay the \$100".

31. I find that MM is entitled to \$100 in liquidated damages from CW.

Cleaning Charges

32. MM asks for damages of \$75 on the basis that EW and CW did not clean a "window, floor, wall, ceiling in the kitchen, dining room, entrance, stairs, hallways and patio" (reproduced as written). She says that she told EW that her charge for cleaning was \$25 per hour. CW says that EW did not use all areas of the house and that MM had made it clear to EW that he would only be responsible for cleaning the bathroom, his own bedroom, and the kitchen. According to CW, these areas were cleaned thoroughly before EW left the home.

33. The Information for Vacating Tenants form was not mentioned in the parties' agreement. I find that this form and the associated charges for cleaning infractions were not incorporated into the agreement and are not binding on the parties. Further,

while a Condition Inspection Report that MM and EW signed in in July of 2020 documented the condition of the home at that time, it does not assist with determining its state when EW left. I find that text MM added text to the form in November of 2020 does not, by itself, prove that EW failed to clean as she says. Although she provided images of the bedroom, MM did not submit photos of any other areas of the home. I find that MM has not established that EW failed to clean any of the other areas of the home, and will confine the remainder of my analysis to the bedroom.

34. The parties' agreement does contain 2 clauses that are relevant to the cleaning issue. Clause 23 of the parties' agreement required EW to professionally clean the carpets and window coverings only if they were new or professionally cleaned before he moved in. This does not appear to have been the case. Clause 27 of the parties' agreement required EW to "maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and the residential property to which the tenant has access".
35. Photos submitted by MM show only EW's bedroom, and not the other areas of the house. The photos do not show any obviously unclean areas, with the exception of a window frame, which is covered with debris. CW says that MM's cleaning standards were unrealistic, but she did not comment about whether she or EW cleaned the window area. I find that the window was not left in a reasonably clean condition as required by the parties' agreement. While I find that MM is entitled to damages for the failure to clean the window, the area involved is very small. So, on a judgment basis, I find that \$5 in damages is reasonable compensation for this breach of the agreement.

Lost rent from MS

36. MM claims \$387 for lost rent from MS. According to MM, MS left early because EW's noise disturbed their quiet enjoyment, disrupted their sleep, and worsened their mental health condition. CW suggests that MS left the home on their own accord and that she should not be responsible for MM's losses.

37. The evidence shows that MS sent MM several text messages on October 14, 2020 complaining about EW's noise and a message on an unspecified date saying that they were uncomfortable being alone in the house with EW. I note that the text messages were not translated in full, and find that it is not possible to know the entire context of the exchange.
38. Neither the noise complaint nor the fact that MS may have been uncomfortable being alone in the house with EW establish that MS left their tenancy early because of EW. The termination agreement between MM and MS did not include any explanation as to why MS ended their occupancy early. Significantly, there is no statement from MS about why they left or to confirm MM's assertion that something EW did unreasonably affected their health.
39. Based on the evidence before me, I find that MM has not established that MS ended their roommate arrangement early because of EW. Therefore, it is not necessary for me to consider whether, under the terms of the parties' agreement, CW would be responsible for any of MM's claimed losses. I dismiss this claim.

Painting Costs

40. MM says EW made 58 holes in the bedroom walls and that she incurred \$367.39 in labour and paint costs to re-paint the room. She provided photos that document each of the 58 holes. Some of the holes have been patched, some appear to be from nails, and many others are very small and appear to be from pins or other small hangers.
41. CW says that EW hung items that required 14 small nails and 3 screws. She says she patched and sanded some of those areas before EW left, and that other areas were "normal wear and tear". CW denies that the "pinholes" MM describes were made by EW, and says that they were there before EW moved in.
42. MM provided photos of the bedroom walls that were taken before EW moved in. While there are no visible marks on the walls, the photos were taken from a distance so it is not possible to tell whether any or all of the numerous small "pinholes" were present at that time.

43. Although it is not clear whether MM gave verbal consent for EW to hang items on the wall, there is no dispute that EW did not obtain the written permission required by the parties' agreement. A photo of EW's occupied room shows a number of items hung on the walls. The items' locations shown in this photo do not appear to correspond with the locations of some of the holes in MM's photos. Although MM says that it is possible that EW moved some of the items after the photo was taken, I find that she has not established that EW was responsible for all of the holes in the walls.
44. MM provided receipts for \$59.80 in paint and \$315 for unspecified painting work. The painter's invoice does not identify the location or locations of the work, whether any patching was necessary, or how much paint was used.
45. Keeping in mind that MM bears the burden of proof, I find that she has not met her burden of proving that the entire room needed to be re-painted as a result of the holes EW made when he hung various items on the walls. However, I accept that EW hung the items without the written permission required by the agreement, and that there were several areas that would have required touch-up paint. On a judgment basis, I order CW to pay MM \$50 for painting materials and labour to address these areas.
46. In summary, MM is entitled to \$435 in lost rent from EW, \$100 in liquidated damages, \$5 for cleaning, and \$50 for painting. I find that MM is entitled to pre-judgment interest on her total damages of \$590 under the *Court Order Interest Act*. Calculated from the move-out date of November 23, 2020, this equals \$1.38.
47. 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. Given that she was partially successful, I find that MM is entitled to reimbursement of half of the \$125 in CRT fees she paid, for a total of \$62.50. MM claimed dispute-related expenses of \$48.39 for translation and postal charges, which I find reasonable. I find that she is entitled to reimbursement of half of these expenses, or \$24.20.

ORDERS

48. Within 30 days of the date of this decision, I order CW to pay MM a total of \$678.08, broken down as follows:
- a. \$590 in damages under the parties' agreement,
 - b. \$1.38 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$86.70, for \$62.50 in CRT fees and \$24.20 for dispute-related expenses.
49. MM is entitled to post-judgment interest, as applicable.
50. The remainder of MM's claims are dismissed.
51. 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.

52. 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.

Lynn Scrivener, Tribunal Member