



Civil Resolution Tribunal

Date Issued: June 4, 2021

File: SC-2020-009347

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Garg v. Rehman*, 2021 BCCRT 608

BETWEEN:

VIVEK GARG

APPLICANT

AND:

INAYAT UR REHMAN and LYBA DAR

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This is a dispute between former roommates over a damage deposit.
2. The applicant, Vivek Garg and his girlfriend, rented a room from the respondents, Inayat Ur Rehman and Lyba Dar, in their apartment. Mr. Garg's girlfriend is not a party to this dispute.

3. Mr. Garg seeks an order for the return of his \$400.00 damage deposit. The respondents disagree and seek to have the dispute dismissed.
4. The parties are each self-represented.
5. For the reasons that follow, I have allowed Mr. Garg's claim in part.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 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 *Yas v. Pope*, 2018 BCSC 282, 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 find I can fairly hear this dispute through written submissions.
8. 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.
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.

10. Generally, residential tenancy disputes 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.

ISSUE

11. The issue in this dispute is whether Mr. Garg is entitled to a full or partial return of his \$400 damage deposit.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Garg must prove his claim 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.

13. The underlying facts are not disputed. On August 4, 2020, Mr. Garg rented a room from the respondents and paid a \$400 damage deposit. The parties agree they had no written rental agreement. I infer from the evidence that the parties understood the damage deposit would be refunded if Mr. Garg moved out leaving the apartment with bills paid, reasonably clean, and intact.

14. When Mr. Garg moved out, the respondents refused to return his damage deposit. The respondents say he left bills unpaid, damaged the blinds, caused them to lose rental income, and took their personal belongings. I turn to each of the respondents' allegations below.

Unpaid utility bills

15. The respondents say that Mr. Garg agreed to pay the apartment's full utility charges for hydro and internet while they were travelling from September to December 2020. Ms. Dar estimates that Mr. Garg is responsible for \$112 per month in hydro from September to December 2020. The respondents further say that Mr. Garg is

responsible for \$48.78 per month in internet charges from September to December 2020. Mr. Garg disagrees and says he was to pay only \$60 per month for utilities. In support, Mr. Garg submitted an August 21, 2020 text message from Mr. Rehman confirming that \$60 was “for all” hydro and internet. I accept that this was the agreed monthly amount between the parties because the respondents have provided no evidence that the parties varied this \$60 agreement. I find that the parties agreed that Mr. Garg would pay, and undisputedly did pay, \$60 a month for the utilities. For this reason, I find that the respondents are not entitled to deduct money from the damage deposit to pay the excess utility charges.

Dirty and damaged apartment

16. Next, the respondents say that because Mr. Garg left the apartment dirty and damaged, they are entitled to retain the damage deposit. Here, the respondents have the burden of proving that Mr. Garg damaged the property (see: *Buckerfields. v Abbotsford Tractor and Equipment*, 2017 BCPC 185 at paragraph 5). The respondents claim Mr. Garg stained the floors, broke a blind, and left behind rotten food. However, the respondents did not provide any evidence of their allegations. Mr. Garg submitted an undated video of the condition he left the apartment in. The video shows the apartment unit’s hallway, closet, washroom, 2 bedrooms, and the living room. I am satisfied that the video shows a generally clean and undamaged apartment. On balance, I accept Mr. Garg’s evidence as an accurate representation of how he left the apartment when he moved out. I find that the apartment was not left in the condition the respondents alleged. So, I find that the respondents are not entitled to deduct money from the damage deposit based on the apartment’s condition when Mr. Garg moved out.

Late return of apartment key

17. Mr. Rehman says he lost a tenant because Mr. Garg returned the apartment keys 2 to 3 days late after the November 30, 2020 move out date. The respondents therefore say that Mr. Garg moved out late. Mr. Garg admits that the keys were not returned until on or after December 2, 2020, but says it was the respondents’ fault for the delay,

so he moved out on time. In any event, I find nothing turns on that as the respondents have not provided supporting evidence that they lost a tenant or rental income due to the late return of the keys. So, I find that the respondents have not established that late return of the keys caused them any loss. For that reason, I find that the respondents are not entitled to deduct money from the damage deposit for the keys' late return.

Missing property

18. Next, the respondents say that Mr. Garg took an extension cord, utensils, a Google Home Mini, books, painting tools, and unspecified "other things" when he and his girlfriend moved out. The respondents did not provide any records of their missing belongings. Mr. Garg only admits to accidentally taking the respondents' extension cord. Mr. Garg says he will return the extension cord but there is no evidence that he did so. Importantly, Mr. Rehman submitted in evidence a December 3, 2020 text message where Mr. Garg says, "And we got your stuff". I find this admission shows that Mr. Garg took more than just the extension cord from the respondents. For that reason, I find that the respondents are entitled to deduct money from the damage deposit for some of their missing property. While the respondents did not provide records of their missing belongings, I am satisfied that the respondents' loss is more than just an extension cord and I find it reasonable to value some of their missing property loss at \$100 on a judgment basis.

Outcome

19. I find that Mr. Garg's tenancy caused the respondents to suffer \$100 in property damage, which I find is deductible from the \$400 damage deposit. So, I find that the respondents must refund the \$300 damage deposit difference to Mr. Garg.

20. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$300 from the date of this dispute (December 16, 2020) to the date of this order, which equals to \$0.63. I decline to award Mr. Garg pre-judgment

interest from the move out date because, as noted, it is disputed and unclear from the evidence which day Mr. Garg moved out.

21. 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. However, none of the parties paid any fees or claimed disputed-related expenses, so I make no order for them.

ORDERS

22. Within 30 days of the date of this order, I order the respondents to pay Mr. Garg a total of \$300.63, broken down as follows:

- a. \$300 as payment for the damage deposit, and
- b. \$0.63 in pre-judgment interest under the *Court Order Interest Act*.

23. The applicant is entitled to post-judgment interest, as applicable.

24. Under CRTA section 48, 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.

25. Under CRTA section 58.1, 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.

Roy Ho, Tribunal Member