



# Civil Resolution Tribunal

Date Issued: June 24, 2021

File: SC-2020-009471

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Owusu v. Maxwell*, 2021 BCCRT 697

BETWEEN:

ETHAN OWUSU

**APPLICANT**

AND:

FRANK MAXWELL and ANDREW MAXWELL

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about residential accommodations. The applicant, Ethan Owusu, signed a 2-month fixed-term tenancy agreement with the respondent landlord, Andrew Maxwell. The respondent Frank Maxwell was also named as a landlord in

the agreement. Given that the respondents have the same last name, and meaning no disrespect, for clarity I will refer to the parties by their first names.

2. Ethan says that the respondents broke the agreement because they never gave him access to the rented premises. Ethan claims a refund of the \$2,215.96 he paid Andrew for rent and a security deposit, although in his submissions he says only \$2,164.16 remains owing.
3. Andrew admits that he is responsible for returning the amounts Ethan paid for the property rental, although he says a third party took those funds from him. Frank did not respond to Ethan's Dispute Notice, and is in default.
4. The parties are each self-represented in this dispute.

## **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.
9. Under section 10(a) of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues. Further, under CRTA section 11, the CRT may refuse to resolve a dispute within its jurisdiction if it considers that it would be more appropriate for another legally binding process or dispute resolution process, among other reasons.
10. Under the *Residential Tenancy Act* (RTA) sections 58 and 84.1, the Residential Tenancy Board (RTB) has exclusive jurisdiction to decide disputes involving rights and obligations under the RTA or under a residential tenancy agreement about a tenant's occupation of a rental unit, among other things. However, RTA section 4(e) expressly excludes living accommodation occupied as vacation or travel accommodation from the RTB's jurisdiction. I asked the parties for further submissions about whether the RTB's dispute resolution process is a more appropriate process for this dispute. Only Ethan provided a response. It is undisputed that the rental at issue here was a vacation rental, and that the RTB refused to hear the dispute and referred Ethan to the CRT. So, I find that the CRT has jurisdiction over this dispute and is the appropriate forum for it.
11. Andrew submitted a third party claim in this CRT dispute, but withdrew it during the facilitation stage. So, that third party claim is not before me.

## **ISSUE**

12. Whether Andrew and Frank must reimburse Ethan \$2,164.16 or another amount for his rent and security deposit payments?

## EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, as the applicant Ethan must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
14. Ethan and Andrew signed a November 23, 2020 "Residential Lease Agreement" for a 2-month fixed term from December 4, 2020 to February 6, 2021. The agreement required a single lump sum rental payment of \$1,790.49 for the whole term, plus a security deposit of \$425.47, both of which Ethan paid in advance. Based on the lease agreement and the parties' correspondence in evidence, I find that Ethan was to have exclusive possession of the premises during the lease's term. The respondents never gave Ethan access to the rented unit, and Ethan asked for a refund of the rental and security deposit payments. Ethan says that Andrew transferred him \$51.80, and that \$2,164.16 remains owing. None of this disputed.
15. In his correspondence with Ethan, Andrew indicated that the rent payment and security deposit had been spent by Frank or taken by a third party. However, in his submissions for this CRT dispute, Andrew says, "the responsibility for the funds rests on me and I concede any and all "culpability" that comes from that and I concede that Mr. Owusu needs his money back.". I find that theft from Andrew or an inability to pay do not determine whether Andrew is responsible for reimbursing Ethan.
16. On the evidence and submissions before me, I find that Andrew broke the parties' lease agreement by failing to provide the agreed accommodations to Ethan. So, I find that Andrew owed Ethan a refund of the entire rent payment and security deposit. I find that Andrew still owes Ethan \$2,164.16 for the remaining amounts that the respondents have not yet reimbursed Ethan.
17. Turning to Frank, the Confirmation of CRT Service form for Frank shows that the CRT sent the Dispute Notice to him by both regular mail and email. Frank replied to the

Dispute Notice email and requested an extension of time to file a response. So, I am satisfied that Frank received the Dispute Notice by email.

18. Frank then failed to respond to the CRT's requests for further information, and did not contact the CRT after requesting an extension. The CRT did not grant an extension of time to file a response. I find Frank failed to file a Dispute Response at all, either before or after the given deadline and without explanation, despite being required to do so under CRT rule 3.1. So, I find Frank is in default.
19. CRT rule 4.3(1) says that the CRT may assume a party in default is liable and resolve the dispute without their participation. In these circumstances, I find it is appropriate to resolve this dispute without Frank's further participation. I also find it is appropriate to conclude that, together with Andrew, Frank is liable for the \$2,164.16 debt claimed by Ethan, for the following reasons.
20. As he did not participate in this dispute, Frank did not respond to the allegation that he had taken Ethan's rent and deposit money. However, Ethan submitted text message correspondence that showed Frank negotiated the price and other terms of the rental with Ethan. Frank is also named as a landlord on the lease agreement. I find that text messages in evidence confirm Frank had a copy of the agreement and did not object to its contents. Weighing the available evidence, I find Frank was a party to the lease agreement and broke it by failing to provide Ethan with the agreed accommodations. So, I find Frank owes Ethan for the remaining, non-reimbursed amounts Ethan paid for the rental. Overall, I find that Andrew and Frank are jointly and severally liable to Ethan for the \$2,164.16 debt, since they are both responsible for it as landlords under the lease agreement. For clarity, joint and several liability means Ethan can collect the entire amount from either respondent..

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

21. Under the *Court Order Interest Act*, Ethan is entitled to pre-judgment interest on the \$2,164.16 owing. I find pre-judgment interest is calculated from December 4, 2020, the first day of the lease, until the date of this decision. This equals \$5.42.

22. 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. Ethan was successful in his claims, so I find he is entitled to the \$125 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

## ORDERS

23. Within 15 days of the date of this order, I order Andrew and Frank to pay Ethan a total of \$2,294.58, broken down as follows:

- a. \$2,164.16 in debt for rent and security deposit reimbursement,
- b. \$5.42 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

24. Ethan is entitled to post-judgment interest, as applicable.

25. 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. A party in default has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

26. 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.

27. 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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Chad McCarthy, Tribunal Member