



# Civil Resolution Tribunal

Date Issued: July 7, 2021

File: SC-2021-001634

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Saini v. Ferguson*, 2021 BCCRT 743

BETWEEN:

ATULPAL SAINI

**APPLICANT**

AND:

IRENE FERGUSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This is a “roommate dispute” about residential accommodations. The respondent, Irene Ferguson, rented a room in her home to the applicant, Atulpal Saini. Mr. Saini says Ms. Ferguson improperly evicted him from the home with 4 hours notice and without refunding any rent. Mr. Saini claims a total of \$2,346 for a rent refund, a lock

re-keying charge deducted from his damage deposit refund, 2 nights of motel accommodations following his eviction, and 3 hours of lost wages.

2. Ms. Ferguson says she was entitled to evict Mr. Saini without notice because he allegedly broke her “house rules.” She says the parties’ rental agreement said rent payments were non-refundable, so she owes Mr. Saini nothing.
3. The parties are each self-represented in this dispute.

## **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. 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. Under the *Residential Tenancy Act* (RTA), the Residential Tenancy Board (RTB) has 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) excludes from the RTB's jurisdiction living accommodation in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation. The submitted evidence shows, and the parties do not deny, that the rented room came with "kitchen privileges" and a shared bathroom. I find that Ms. Ferguson shared kitchen and bathroom facilities with Mr. Saini. Further, there is no evidence that the RTB accepted jurisdiction over this dispute. So, I find that the RTA does not apply to the room rental, and that the CRT is the appropriate forum for this dispute.

## **ISSUE**

9. The issue in this dispute is whether Ms. Ferguson provided inadequate move-out notice to Mr. Saini, and whether she owes him \$2,346 for a rent refund, lock re-keying charges, motel accommodations, and lost wages.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Saini must prove his claims on a balance of probabilities. I have read all the parties' submitted material but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
11. Mr. Saini rented a room from Ms. Ferguson beginning on February 15, 2021. Rent was \$800 per month, with a \$400 damage deposit. When he moved in, Mr. Saini paid Ms. Ferguson \$2,400: \$400 for the damage deposit, \$400 for a half month of rent in February 2021, \$800 for March 2021 rent, and \$800 for final-month rent prepaid "in lieu of 30-day notice." As discussed below, Ms. Ferguson evicted Mr. Saini on February 22, 2021. None of this is disputed.

12. The only written evidence of the parties' rental agreement was an entry in Ms. Ferguson's day planner acknowledging Mr. Saini's rent and damage deposit payments. Mr. Saini agrees the payment record is accurate, but says he did not agree to Ms. Ferguson adding a line saying that the rent and damage deposit payments were non-refundable. Mr. Saini says he never agreed to or signed an agreement about payments being non-refundable, which would have been unacceptable to him. Mr. Saini says that Ms. Ferguson created the submitted day planner entry and forged his signature on it, which Ms. Ferguson denies. A scanned copy of a day planner page shows the payment acknowledgement and the words "not refundable" at the end of the entry, together with an illegible, undated, and unlabelled signature on the entry.
13. As the party alleging forgery, Mr. Saini bears the burden of proving the allegation. Mr. Saini submitted no samples of his ordinary signature or any expert handwriting analysis evidence, which I find is required here because proving a signature's authenticity is outside the scope of ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). I find Mr. Saini has not met the burden of proving that the signature was not his. However, I find nothing turns on this, because I find the agreement did not make rent payments non-refundable if Mr. Saini was evicted on less than 30 days' notice despite breaking no house rules, as explained below.
14. Ms. Ferguson says that Mr. Saini agreed that the rent payments were non-refundable, and that this applied even if she evicted him for breaking house rules. Ms. Ferguson also says that because Mr. Saini paid for the last month of rent "in lieu of notice", she did not need to give him 30 days' eviction notice. On balance, I find the evidence shows the last month rent payment was in lieu of Mr. Saini giving move-out notice, and not in lieu of Ms. Ferguson giving eviction notice. I find the evidence supports Mr. Saini's position that the rental agreement did not allow Ms. Ferguson to evict him at any time without notice while keeping all of his pre-paid rent.

15. Further, for the following reasons, I find that Mr. Saini did not break any agreed-upon house rules, and Ms. Ferguson was not entitled to evict him for rule breaches in any event.
16. Ms. Ferguson says that her house rules included no alcohol allowed on the premises and no working from home. Mr. Saini says these were not house rules when he agreed to the room rental, and that Ms. Ferguson instituted those rules later, without his agreement. I find that house rules unilaterally imposed by Ms. Ferguson after the room rental began and without Mr. Saini's agreement are not binding on Mr. Saini.
17. I find there is no list of house rules, or any correspondence between the parties, saying that either alcohol or working from home was prohibited. Ms. Ferguson submitted an excerpt from what she says was the room rental advertisement, which said "no drinking". Mr. Saini says that Ms. Ferguson added those words to a later version of the advertisement after he rented the room, and those words were not part of the advertisement he answered. In any event, I find that a "no drinking" rule would prohibit the consumption of alcoholic beverages on the premises, but not their mere presence. I find the evidence shows Mr. Saini brought bottles of beer into the home, but fails to show he actually consumed any. On balance, I find that there was no agreed house rule prohibiting alcohol and the parties' rental agreement did not reasonably imply any such prohibition. Further, even if there had been a "no drinking" house rule as shown in the alleged advertisements, I find the evidence fails to show Mr. Saini broke such a rule by consuming alcohol in the home.
18. Correspondence between the parties shows that Ms. Ferguson asked Mr. Saini whether he would be working from home. However, I find that the evidence does not show Ms. Ferguson told Mr. Saini that working from home was prohibited when he rented the room, or that Mr. Saini later agreed to such a rule. I also find the rental agreement did not reasonably imply that working from home was prohibited. So, I find Mr. Saini did not break an agreed house rule prohibiting working from home.
19. In addition, even if Mr. Saini had broken house rules, I find the evidence does not show that the parties agreed to any penalties or consequences for breaking house

rules. In particular, I find there is no evidence that the parties ever discussed or agreed whether anything could result in Mr. Saini's immediate eviction and termination of the rental agreement. In the circumstances, I find Ms. Ferguson was not entitled to evict Mr. Saini, even if he had broken house rules as alleged.

20. Given my above findings that Mr. Saini did not break any agreed house rules about "bringing alcohol" and "working remotely", and that Ms. Ferguson was not entitled to evict Mr. Saini for rule breaches, I find Ms. Ferguson broke the rental agreement by evicting Mr. Saini. Also as noted, I find the parties did not agree there would be no rent refunds for an eviction on less than 30 days' notice. Even if they had, I find it was an implied contract term that Mr. Saini was entitled to a rent refund if he was improperly evicted in breach of the rental agreement, which was the case here.
21. If a party breaks a contract, they are generally responsible for paying compensation, called "damages", that puts the other party in the same position they would have been in if the contract had not been broken. Mr. Saini claims \$2,346 in damages consisting of an unspecified rent refund, a \$124.53 lock re-keying refund, \$128 for motel accommodations, and "approximately" \$124.80 for 3 hours of lost wages.
22. Mr. Saini was evicted on February 22, 2021, so he resided in the room for 8 out of the 14 days for which he paid rent in February 2021. This means Ms. Ferguson owes him a refund of \$171.43 for 6 unused days of February 2021 rent, plus \$800 for March 2021 rent and \$800 for prepaid "last month" rent, which totals \$1,771.43 in rent. I also find the evidence does not show that the parties agreed Mr. Saini would pay for lock re-keying when he moved out, and it is undisputed that Ms. Ferguson withheld \$124.53 of Mr. Saini's damage deposit for lock re-keying. So, I find Ms. Ferguson owes Mr. Saini a \$124.53 refund for lock re-keying.
23. Mr. Saini submitted receipts showing he paid \$127.60 for a motel room on February 22, 2021 and February 23, 2021. I find this reasonable motel expense was a direct result of Ms. Ferguson's improper short-notice eviction. So, I find Ms. Ferguson owes Mr. Saini \$127.60 for motel accommodations.

24. While Mr. Saini was at his work offices on February 22, 2021, Ms. Ferguson sent him a text message saying he was evicted and needed to vacate the premises by 5:00 p.m., failing which she would have the locks re-keyed at his expense. A time sheet in evidence shows that Mr. Saini took 3 hours of “personal leave without pay” on February 22, 2021. Ms. Ferguson says she spoke with Mr. Saini’s employer on February 22, 2021 and confirmed that Mr. Saini was granted time off work to deal with the eviction. Mr. Saini’s employment offer letter says his wage was \$41.69 per hour. Ms. Ferguson does not directly deny that Mr. Saini lost approximately \$124.80 in wages by taking this time off.
25. It is undisputed that Mr. Saini took 3 hours off work because Ms. Ferguson evicted him on approximately 4 hours’ notice. As noted, the eviction was a breach of the rental agreement. I find Mr. Saini reasonably needed this time to move out, given the sudden and unexpected eviction and the 5:00 p.m. move-out deadline, which was 30 minutes after the end of his normal winter work hours. So, I find Ms. Ferguson’s rental agreement breach caused Mr. Saini to miss 3 hours of work, and I allow his claim for \$124.80 in lost wages.
26. In total, I allow Mr. Saini’s claim for \$2,148.36 for a rent refund, lock re-keying refund, motel accommodation charges, and lost wages.

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

27. Under the *Court Order Interest Act*, Mr. Saini is entitled to pre-judgement interest on the \$2,148.36 owing. I find pre-judgment interest is calculated from February 22, 2021, the eviction date, until the date of this decision. This equals \$3.60.
28. 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. Mr. Saini was generally successful in his claims, so I find he is entitled to reimbursement of the \$125 he paid in CRT fees. Mr. Saini says he sent an *Access To Information Act* request to the police to verify Ms. Ferguson’s “real” or “official”

name for use in his CRT application. Mr. Saini submitted a scan of a March 2, 2021 courier receipt for \$20.77, and a March 11, 2021 police reply seeking further information about his request. I find the evidence does not show that Mr. Saini received any information about Ms. Ferguson through his request, or that he needed to make such a request. So, I find that the \$20.77 courier fee is not a reasonable CRT dispute-related expense, and I order no expense reimbursement.

## **ORDERS**

29. Within 15 days of the date of this order, I order Ms. Ferguson to pay Mr. Saini a total of \$2,276.96, broken down as follows:
  - a. \$2,148.36 in damages for breach of a rental agreement,
  - b. \$3.60 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
30. Mr. Saini is entitled to post-judgment interest, as applicable.
31. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.



32. 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