



Civil Resolution Tribunal

Date Issued: July 29, 2021

File: SC-2021-000699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kumar v. Kucharyshen*, 2021 BCCRT 828

B E T W E E N :

NITHASHA PREM KUMAR

APPLICANT

A N D :

JUDITH KUCHARYSHEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is between former roommates. The applicant, Nithasha Prem Kumar, rented a room from the respondent, Judith Kucharyshen.
2. In Ms. Kumar's March 24, 2021 Amended Dispute Notice, she claims a total of \$3,409.86 in various damages, including the return of her \$350 damage deposit,

\$1,709.86 for costs related to her eviction, and \$1,000 for emotional and mental distress arising from alleged verbal sexual harassment, human rights violation, verbal abuse, and racial discrimination.

3. Ms. Kucharyshen denies all of Ms. Kumar's claims, and says she was entitled to evict Ms. Kumar for disruptive behavior and verbal abuse. Ms. Kucharyshen further says she is entitled to keep the entire damage deposit because Ms. Kumar left the apartment and room in a poor condition.
4. The parties are each self-represented.

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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. However, 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.
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. Generally, the CRT does not take jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* does not apply to this dispute because the RTB refuses jurisdiction over 'roommate disputes', such as this one. So, I find that this dispute is within CRT's small claims jurisdiction.

ISSUES

10. The issues in this dispute are:
 - a. Whether Ms. Kumar is entitled to return of her \$350 damage deposit,
 - b. Whether Ms. Kumar is entitled to a \$130 refund as prorated rent,
 - c. Whether Ms. Kumar is entitled to \$167.04 for hotel lodging,
 - d. Whether Ms. Kumar is entitled to \$582 for alternate rental accommodations,
 - e. Whether Ms. Kumar is entitled to \$91.14 in Canada Post charges, \$100 for gas costs, and \$339.68 for miscellaneous household items (expenses),
 - f. Whether Ms. Kumar is entitled to \$300 in damages for past wage loss, and
 - g. Whether Ms. Kumar is entitled to \$1,000 in damages for emotional and mental distress.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Kumar 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. Ms. Kumar began renting a room from Ms. Kucharyshen on March 1, 2020 for \$650 per month. The rental term was for 1 year. The parties did not have a written tenancy agreement.
13. At or around March 1, 2020, Ms. Kumar paid a \$350 damage deposit to Ms. Kucharyshen. The \$350 damage deposit receipt submitted into evidence by both parties noted that Ms. Kucharyshen would give 2 months' notice to end the tenancy.
14. On January 1, 2021, Ms. Kucharyshen had 3 guests come over for dinner and Ms. Kumar joined them. At this dinner, 1 of the guests, R, allegedly verbally abused Ms. Kumar by making various sexual and racial remarks about her.
15. It was after this dinner that the parties' relationship began to deteriorate. Ms. Kumar did not want R to come into the apartment because she was uncomfortable and did not feel safe. Ms. Kucharyshen made efforts to accommodate Ms. Kumar but Ms. Kumar found those efforts inadequate.
16. Ultimately, on January 25, 2021, Ms. Kucharyshen delivered an eviction notice to Ms. Kumar. The notice said Ms. Kumar must vacate the room by 12:00 p.m. on January 28, 2021.
17. On January 26, 2021, Ms. Kumar rented a hotel room. Ms. Kumar said she had to rent the hotel room for her safety because Ms. Kucharyshen allegedly attacked her that day. I discuss this below.
18. On January 27, 2021, Ms. Kumar found alternate rental accommodations which were effective immediately, with a higher monthly rent of \$291.

Return of \$350 damage deposit

19. Ms. Kucharyshen says that Ms. Kumar paid only a \$325 deposit, however she has provided no evidence of this. I do not accept Ms. Kucharyshen's unsupported assertion that Ms. Kumar's paid deposit was only \$325. While Ms. Kucharyshen alleges that the damage deposit receipt was "manipulated from the original copy" by Ms. Kumar, Ms. Kucharyshen does not say what part of the receipt was manipulated and did not submit an original copy into evidence. For this reason, I accept the receipt as an accurate representation of what the parties agreed to, and I find Ms. Kumar paid a \$350 damage deposit.
20. As noted, Ms. Kucharyshen says she is entitled to keep the damage deposit because Ms. Kumar allegedly left the apartment and room in a poor condition. Here, Ms. Kucharyshen has the burden of proving that she is entitled to keep the damage deposit (see: *Buckerfields v Abbotsford Tractor and Equipment*, 2017 BCPC 185 at paragraph 5). In support, Ms. Kucharyshen submitted into evidence a \$20 handwritten carpet cleaning receipt, a \$325 handwritten cleaning receipt, and undated photos of dirty dishes, leftover garbage, and unclean parts of the apartment and room.
21. In Ms. Kucharyshen's handwritten cleaning receipt, it itemizes charges for cleaning the bedroom and bathroom, sanitizing, draining, and descaling of the bathroom, washing the bedding, carpet shampooing, washing the dishes and the floors, and garbage removal at a rate of \$30 per hour. It is unclear from the evidence who is charging for the cleaning service and how the hourly rate was determined. The receipt also duplicates the \$20 carpet cleaning charge and overbilled nearly an additional hour for 1 hour of carpet shampooing and cleaning. So, I give little weight to this receipt.
22. Ms. Kucharyshen also submitted evidence for her apartment re-keying cost. However, she also provided evidence that the building manager did not charge her for re-keying the apartment. Ms. Kucharyshen does not explain this discrepancy, so I find that she had not incurred a re-keying charge.

23. Ms. Kumar generally denies leaving the apartment and room in poor condition. Ms. Kumar does not specifically deny the garbage in the apartment but says that she cleaned the dishes before she left. In support, Ms. Kumar submitted undated photos showing basically a clean and undamaged room. Ms. Kumar admits that she was unable to clean everything because of her hasty departure, which I discuss further below.
24. It is not clear what terms and conditions the parties agreed to when they entered into the verbal tenancy agreement. While Ms. Kucharyshen says that her rental advertisement described the rental terms, she did not submit this into evidence.
25. A commonly understood purpose of a damage deposit is to cover the landlord for loss should the tenant leave the rental accommodation unclean or damaged beyond normal wear and tear. Without evidence that the parties agreed to something different, I find this was the damage deposit's purpose.
26. I accept that some cleaning was necessary after Ms. Kumar's departure, which is undisputed. However, I note that many of the cleaning items Ms. Kucharyshen claims are for cleaning things arising from normal wear and tear. Further, as noted, I find that there are errors with Ms. Kucharyshen's cleaning receipt. For these reasons, on a judgement basis, I find it reasonable to assess Ms. Kucharyshen's cleaning charges at \$100. So, I find that Ms. Kucharyshen must refund Ms. Kumar the \$250 damage deposit.

\$130 prorated rent refund

27. As set out in a receipt in evidence, Ms. Kumar paid the full \$650 for her January 2021 rent. Ms. Kumar claims a \$130 rent refund from January 26 to 31, 2021 for the 6 days she did not live in the apartment. In contrast, Ms. Kucharyshen denies owing any rent refund. She says she was permitted to evict Ms. Kumar for disruptive and verbally abusive behavior but gave no details and submitted no evidence in support of this. I find that Ms. Kucharyshen has failed to prove that she was entitled to evict Ms. Kumar.

28. The parties had a valid and binding tenancy agreement, so I find they must fulfill their obligations under it unless they terminate it. Termination can occur by repudiation, which occurs when 1 party shows an intention to not be bound by the agreement and the other party accepts it (see *Kuo v. Kuo*, 2017 BCCA 245 at paragraphs 39 to 40). I find that this is what occurred here.
29. I find that the March 1, 2020 damage deposit receipt and notations formed the substance about the parties' termination terms for the tenancy. Namely, Ms. Kucharyshen was to provide 2 months' notice to Ms. Kumar prior to terminating the tenancy agreement, which Ms. Kucharyshen undisputedly failed to do. I find that Ms. Kucharyshen's refusal to honour the existing agreement amounted to a breach of the agreement and demonstrated a clear intention to no longer be bound by its terms. I also find that, by asking for a refund, Ms. Kumar accepted the repudiation of the agreement. After Ms. Kumar accepted the repudiation, the contract terminates, and Ms. Kucharyshen could no longer rely on the agreement's terms.
30. I find that the appropriate remedy for Ms. Kumar is damages. Damages for breach of contract are intended to put a party in the position they would have been in had the contract been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 219 at paragraph 38). For this reason, I find that Ms. Kucharyshen is liable to Ms. Kumar for her unused January 2021 rent.
31. However, it is unclear how Ms. Kumar came to a \$130 valuation. Based on my calculation, the balance of Ms. Kumar's rent for the 6 days from January 26 to 31, 2021 is \$125.80 ($\$650 \div 31 \text{ days} \times 6 \text{ days}$). So, I find that Ms. Kucharyshen must pay Ms. Kumar \$125.80 for the balance of her January 2021 rent.

\$167.04 reimbursement for hotel lodging

32. Ms. Kumar says that she had to rent a hotel room on January 26, 2021 because Ms. Kucharyshen had assaulted her. Ms. Kucharyshen denies this and says she was not at home on that day. Conversely, Ms. Kumar says that the police attended and documented an assault. In support, Ms. Kumar submitted into evidence a

Government of Canada Access to Information receipt. However, I do not find this receipt helpful. The receipt is not the police records, and I am unable to determine from it what was requested. Likewise, I do not find the photo Ms. Kumar submitted of a knocked over chair in her room helpful to show an assault occurred. On a balance, I am unable to conclude that Ms. Kucharyshen was present on January 26, 2021 or an assault had occurred. For the same reason, I am also unable to conclude that Ms. Kumar had to leave the apartment hastily such that she was unable to clean the apartment and room before leaving, as discussed earlier. So, I find it unproven Ms. Kucharyshen caused Ms. Kumar to incur a hotel room cost and I dismiss this claim.

\$582 reimbursement for alternate rental accommodations

33. Ms. Kumar says that because Ms. Kucharyshen evicted her, she paid more for her new rental accommodations. Ms. Kumar submitted a receipt showing that her monthly rent increased by \$291 for February and March 2021. So, Ms. Kumar claims \$582 for the additional rent she had paid for the balance of the 2 remaining months on the parties' rental agreement. Ms. Kucharyshen says she is not responsible for Ms. Kumar's rental choices.

34. However, I disagree with Ms. Kucharyshen. As I have found that Ms. Kucharyshen breached the rental contract, I find that she is the cause for the additional rental costs Ms. Kumar incurred. Given that Ms. Kumar had nowhere to live and had to find alternate rental accommodations on short notice, I find in the circumstances the amount Ms. Kumar claims is reasonable. Therefore, I find that Ms. Kucharyshen must pay Ms. Kumar for her undisputed additional \$592 rental costs.

Reimbursement for expenses

35. Ms. Kumar claims reimbursement for expenses arising from the eviction. She claims \$91.14 in mail forwarding charges, \$100 in gas costs, and \$339.68 for miscellaneous household items. Ms. Kucharyshen did not specifically address these claimed remedies, but instead submits that Ms. Kumar's claims are inappropriate. However, I find nothing turns on Ms. Kucharyshen's submissions given my conclusion that Ms. Kumar is not entitled to any reimbursement for expenses. My reasons follow.

36. Ms. Kumar submitted a \$91.14 receipt from Canada Post for mail forwarding. However, it is unclear how this expense arose from the eviction or why it was necessary. Ms. Kumar has provided no submissions in this regard. Put another way, I am not satisfied that Ms. Kumar would not have incurred this expense in any event had the tenancy agreement not terminated early. For this reason, I find that Ms. Kumar has failed to prove this claim and I dismiss it.
37. For the gas expense, Ms. Kumar says that she had to travel farther to and from work due to the eviction. Ms. Kumar submitted 2 Google Map images for her travel distance to and from work before and after eviction. However, I am unable to conclude that the location provided was Ms. Kumar's workplace as I have no evidence about where she worked. I also have no evidence about how she came to her valuation for gas costs, such as how she calculated cost per kilometers. For these reasons, I am not satisfied that Ms. Kumar has proved this expense, so I dismiss this claim.
38. Lastly, I dismiss the claim for the miscellaneous household items. Ms. Kumar says that she had to purchase new household items as a result of the eviction. It is unclear from the evidence whether Ms. Kucharyshen kept Ms. Kumar's household items or whether Ms. Kucharyshen provided household items for Ms. Kumar to use. In any event, since it is not clear what terms and conditions the parties agreed to, I am unable to conclude what household items formed part of the parties' rental agreement. In addition, the receipts that Ms. Kumar submitted are mostly nondescript and the items she highlighted do not add up to the amount she claims. For these reasons, I find that Ms. Kumar has also failed to prove this claim, and so I dismiss it.

\$300 wage loss claim

39. Ms. Kumar claims \$300 for "a few days" of missed work due to the short notice eviction. Ms. Kucharyshen did not specifically address this claim. However, again, I find nothing turns on this given my conclusion that Ms. Kumar has failed to prove this claim.

40. Ms. Kumar submitted 2 relatively nondescript documents titled “CASH INFLOW AND OUTFLOW”, with a subheading “Operating Activities” and “Sales” with a dollar amount. It is unclear that this document is a pay stub. There is no employer information on the record, nor do I see any standard payroll deductions as taxes or Employment Insurance. Ms. Kumar has also not provided her work schedule showing that she had missed work or hours during the relevant time period. It is also unclear what a “a few days” means. For these reasons, I find that Ms. Kumar has failed to prove this claim, so I dismiss her claim for wage loss.

\$1,000 damages for emotional and mental distress

41. Ms. Kumar seeks \$1,000 in damages for emotional and mental distress arising from alleged verbal sexual harassment, human rights violation, verbal abuse, and racial discrimination. Ms. Kucharyshen does not specifically address these allegations but generally denies that this occurred to Ms. Kumar.

42. At the outset, I note that the “tort of harassment” is not recognized in British Columbia (see *Total Credit Recovery v. Roach*, 2007 BCSC 530). Further, Ms. Kumar’s verbal sexual harassment and verbal abuse allegations arise solely from her interaction with R, who is not a party to this dispute. I would find no legal basis to order Ms. Kucharyshen to pay damages for R’s conduct.

43. Turning to Ms. Kumar’s claim for mental distress damages, the BC Court of Appeal has found that there must be some evidentiary basis for awarding damages for mental distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at paragraphs 48 to 49). As discussed in the non-binding but persuasive decision in *Eggberry v Horn et al*, 2018 BCCRT 224, for a claim for stress or mental distress to be successful there must be some medical evidence supporting the stress or mental distress. I agree with the reasoning in *Eggberry* and apply it here. While I accept that the situation may have been stressful and unpleasant for Ms. Kumar, that alone is insufficient to provide damage or loss for mental distress. As Ms. Kumar did not submit any medical evidence, I find she is not entitled to damages for this claim, so I dismiss it.

Conclusion

44. In summary, I find Ms. Kucharyshen must pay Ms. Kumar \$250 for the damage deposit, \$125.80 as a refund for prorated rent, and \$592 as reimbursement for alternate rental accommodations, totalling \$967.80.
45. The *Court Order Interest Act* applies to the CRT. Ms. Kumar is entitled to pre-judgment interest on the \$967.80 from January 25, 2021, the date of her eviction, to the date of this decision. This equals \$2.21.
46. 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. As Ms. Kumar was partially successful, I find she is entitled to reimbursement of half her \$125 CRT fees, which is \$62.50. The parties did not claim any dispute-related expenses, so I award none.

ORDERS

47. Within 30 days of the date of this order, I order Ms. Kucharyshen to pay Ms. Kumar a total of \$1,032.51, broken down as follows:
 - a. \$250 in debt for the damage deposit,
 - b. \$125.80 as refund for prorated rent,
 - c. \$592 as reimbursement for alternate rental accommodations, and
 - d. \$2.21 in pre-judgment interest under the *Court Order Interest Act*, and
 - e. \$62.50 in CRT fees.
48. Ms. Kumar is entitled to post-judgment interest, as applicable.
49. I dismiss the balance of Ms. Kumar's claims.

50. 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.
51. 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.

Roy Ho, Tribunal Member