



Civil Resolution Tribunal

Date Issued: September 15, 2021

File: SC-2021-001091

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rydell v. Aman*, 2021 BCCRT 1001

BETWEEN:

HAROLD RYDELL and JHEN PENG

APPLICANTS

AND:

SOFIA AMAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This is a roommate dispute.
2. The respondent, Sofia Aman, rented a room from the applicant, Harold Rydell, in a shared house with Mr. Rydell and the respondent, Jhen Peng. The applicants say Ms. Aman moved out before the end of her tenancy agreement. They claim \$1,590

in unpaid rent and late fees, \$334.07 in utilities and late fees, and \$30 because Ms. Aman allegedly failed to complete her household duties.

3. Ms. Aman says she moved out because of a breakdown in the parties' roommate relationship. She says Mr. Rydell denied her access to facilities, enforced rules that were not in the parties' agreement, and harassed her. Ms. Aman says Mr. Rydell's behaviour nullified their agreement. She also says Mr. Rydell kept her damage deposit, which would cover any costs she has to pay. Ms. Aman did not file a counterclaim for the deposit.
4. Mr. Rydell represents both applicants. Ms. Aman represents herself.

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. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as those decisions are within the jurisdiction of the Residential Tenancy Branch (RTB). However, the RTB refuses jurisdiction over "roommate disputes" with shared kitchen or bathroom, such as is the case here. For that reason, I find this dispute falls within the CRT's small claims jurisdiction.
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. 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.

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.

PRELIMINARY ISSUES

10. Ms. Aman submitted late evidence, namely emails from herself to Mr. Rydell, a draft email, and a blank RTB form. Although the evidence was late, the applicants did not object to it and had the opportunity to respond to it in their arguments. Further, I find Mr. Rydell would already have been aware of the emails to himself. So, I find the applicants were not unfairly prejudiced by the respondent's late evidence. Keeping in mind the CRT's mandate which includes flexibility, I allow the late evidence and where necessary address the relevant weight below.

ISSUE

11. The issue in this dispute is whether Ms. Aman must pay the applicants rent, utilities, late fees, or damages for allegedly failing to complete her duties and, if so, how much?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this one the applicants bear the burden of proving their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the

submissions and weighed the evidence provided, but only refer to that necessary to explain and give context to my decision.

13. On August 19, 2020, Ms. Aman and Mr. Rydell entered into a lease agreement, from September 1, 2020 to April 30, 2021. I find the relevant terms are:

- Rent is \$425 per month, with a \$15 per day late fee.
- Utilities are shared equally by renters. Bills are to be paid when received, with a \$5 daily late fee.
- Ms. Aman paid a \$210 damage deposit, to be returned after utilities, expenses, and damages were assessed, keys returned, and only if the lease agreement is adhered to.
- Ms. Aman agreed to clean up the front stairway and kitchen on a weekly basis, by Sunday morning. She agreed to pay \$15 per week if she did not do her kitchen duties, clean her room, or lock the house.
- Use of the kitchen, washer, dryer, living and dining areas, yard and internet are all at Mr. Rydell's discretion. The agreement allowed for laundry user fees and additional costs for internet usage.
- Mr. Rydell could serve a 48-hour eviction notice on Ms. Aman if she failed to pay rent or expenses or otherwise comply with the agreement.
- Ms. Aman agreed to comply with the house rules or lose "privileges", which is not defined.

14. The parties agree that Ms. Aman told Mr. Rydell sometime in January 2021 that she would be moving out but provided no move out date. The lease agreement is silent on how Ms. Aman could terminate the lease.

15. In a February 3, 2021 letter, Mr. Rydell demanded payment of Ms. Aman's share of the January utilities and her February rent, which remained unpaid, plus late fees. Mr.

Rydell said failure to pay would result in eviction and that Ms. Aman should consider the letter as her 48-hour eviction notice.

16. It is undisputed that Ms. Aman moved out on February 11, 2021.
17. When a party indicates they no longer intend to be bound by a contract's terms, it is called repudiation. The other party can accept the repudiation, which terminates the contract (see *Kuo v. Kuo*, 2017 BCCA 245). Here, I find Ms. Aman breached the lease agreement by undisputedly failing to pay her share of the January utilities and February rent. I find she indicated that she no longer wished to be bound by the contract by verbally giving notice of her intention to move out. I further find Mr. Rydell's February 3, 2021 eviction notice showed his acceptance of Ms. Aman's repudiation and effectively ended their lease agreement before the end of the tenancy term.
18. Ms. Aman says Mr. Rydell breached the lease agreement by denying her access to internet and laundry facilities. I disagree because the agreement allows Mr. Rydell to restrict Ms. Aman's laundry and internet access if she fails to comply with the agreement. Although Ms. Aman says she completed her weekly kitchen duties as required, I find she admitted to not disposing of the compost in a January 5, 2021 email. So, I find it likely she also did not dispose of the composting on January 31, 2021 and February 7, 2021, based on Mr. Rydell's photos and Ms. Peng's February 4, 2021 signed statement saying Ms. Aman was often unwilling to do her chores. Further, it is undisputed that Ms. Aman did not pay her share of the January utilities and so I find Mr. Rydell was entitled to restrict her internet access under the lease agreement.
19. I do not find Mr. Rydell nullified the lease agreement by harassing Ms. Aman, insulting her, or refusing to fix the lock on her door. Ms. Aman has not provided any evidence that Mr. Rydell's behaviour rose to the level of harassment or breached any agreement about roommate conduct.
20. The appropriate remedy for Ms. Aman's breach and repudiation of the agreement is damages, which are meant to put Mr. Rydell in the position he would have been in if

the contract had been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319). I find Mr. Rydell's entitlement to rent and utilities for January and February crystalized before the lease agreement was terminated and so he is entitled to those payments, subject to proof of damages. However, I find Mr. Rydell is not entitled to March or April rent payments because he accepted Ms. Aman's repudiation and because Ms. Aman did not receive the corresponding benefit of accommodation or use of the utilities.

21. Based on the lease agreement, I find Ms. Aman must pay Mr. Rydell the \$530 he claims for February's rent, including the claimed 8 days of late fees. Mr. Rydell claimed \$141.41 for January utilities, including 8 days of late fees. I find the gas, hydro and telephone bill he submitted for January 2021 cost a total of \$223.69. Dividing the January bills by the 3 occupants of the house (Mr. Rydell, Ms. Peng and Ms. Aman), equals \$74.56 I dismiss Mr. Rydell's claim for January's internet cost, which he says was \$24.87, because he provided no proof of the cost. So, including 8 days of late fees (\$40), I find Mr. Rydell is entitled to a total of \$114.56 for January utilities.
22. Mr. Rydell provided no proof of the value of February's utilities so I find he has not proven those damages.
23. As noted above, I find Ms. Aman likely did not complete her kitchen clean up duties on January 31 and February 7, 2021 as claimed by the applicants. Under the terms of the lease agreement, which was still in effect at the time, I find she must pay Mr. Rydell \$30 total for this breach.
24. The applicants say Ms. Peng and Mr. Rydell together paid Ms. Aman's share of the utilities after she moved out, however neither provided any evidence that Ms. Peng made any extra payments on behalf of Ms. Aman. The utility bills in evidence are in Mr. Rydell's name. Ms. Peng is not party to the lease agreement between Ms. Aman and Mr. Rydell and there is no indication that she is an owner of the shared house. So, I find Ms. Peng's claims against Ms. Aman must fail.

25. In total, I find Mr. Rydell is entitled to \$674.56 for payment of January utilities, February rent, and kitchen duties.
26. As noted, I find Ms. Aman paid Mr. Rydell a \$210 deposit either before, or when, she moved in. It is undisputed that Mr. Rydell has not returned the deposit. Ms. Aman says the deposit should cover whatever amount she owes for January which, I infer, means for the utility bill.
27. Although Ms. Aman did not file a counterclaim for the return of her damage deposit, I infer she argues that she is entitled to a set off against any amounts she owes Mr. Rydell. I find I can consider whether she is entitled to a set-off for the damage deposit as it is reasonably connected to the debt she owes Mr. Rydell (see *Wilson v. Fotsch*, 2010 BCCA 226).
28. Mr. Rydell argues that Ms. Aman did not vacuum or clean her bedroom carpet when leaving, as required under the lease agreement. I find Mr. Rydell's photos show an unvacuumed carpet, but do not show any dirt or stains that would require carpet cleaning. Mr. Rydell has provided no evidence of any costs he incurred to vacuum or clean the room. On a judgment basis, I find he is entitled to keep \$20 of Ms. Aman's damage deposit for vacuuming costs.
29. I deduct Ms. Aman's remaining \$190 damage deposit from the \$674.56 she owes Mr. Rydell, leaving \$484.56. I find Ms. Aman must pay Mr. Rydell this amount in full satisfaction of her debt.
30. The *Court Order Interest Act* applies to the CRT. I find Mr. Rydell is entitled to pre-judgment interest on the \$484.56 from February 1, 2021 to the date of this decision. February 1 represents the average date the various payments were due and reflects the CRT's mandate of proportionality and efficiency. The pre-judgment interest is \$1.36.
31. 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. As Mr. Rydell was only partially successful in his claims, I

find he is entitled to reimbursement of \$62.50, which is half his paid CRT fees. No party claimed dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Ms. Aman to pay Mr. Rydell a total of \$548.42, broken down as follows:
 - a. \$484.56 in debt,
 - b. \$1.36 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
33. Mr. Rydell is entitled to post-judgment interest, as applicable.
34. I dismiss Mr. Rydell's remaining claims. I also dismiss Ms. Peng's claims.
35. 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.

36. 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.

Sherelle Goodwin, Tribunal Member