



# Civil Resolution Tribunal

Date of Original Decision: October 20, 2021

Date of Amended Decision: August 4, 2022

File: SC-2021-001783

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thibault v. Contini*, 2021 BCCRT 1110

BETWEEN:

JOANNE THIBAULT

**APPLICANT**

AND:

LAURA CONTINI

**RESPONDENT**

AND:

JOANNE THIBAULT

**RESPONDENT BY COUNTERCLAIM**

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**AMENDED REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This is a dispute between former roommates. The applicant and respondent by counterclaim, Joanne Thibault, and the respondent and applicant by counterclaim, Laura Contini, were co-tenants in an apartment. Ms. Thibault says she paid the landlord monthly rent of \$3,600, plus \$150 for internet, and Ms. Contini would reimburse her \$1,875 each month for her half. Ms. Thibault says Ms. Contini failed to pay her full share of January 2021 rent and internet expenses. Ms. Thibault claims \$615 for Ms. Contini's outstanding portion of their January 2021 rent and internet expenses.
2. Ms. Contini does not dispute that she owes Ms. Thibault the claimed \$615. However, Ms. Contini says she held that amount back because Ms. Thibault breached their agreement to share the apartment until April 30, 2021, by moving out in February 2021. Ms. Contini[i] counterclaims for \$2,985, which is \$3,600 for Ms. Thibault's share of the rent for March and April 2021, less the owed \$615.
3. Ms. Contini also says in her Dispute Response that she seeks \$5,000 in damages for Ms. Thibault's alleged unpredictable and intimidating behaviour after moving out of the apartment. Ms. Contini did not include this claim in her counterclaim Dispute Notice, so I infer that she seeks a set-off of any amount owing to Ms. Thibault.
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. 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 the *Residential Tenancy Act* (RTA), the Residential Tenancy Board 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, I find the RTA does not apply to this dispute because the parties are not the landlord and tenant, and this is not a dispute about rights and obligations under a tenancy agreement. Rather, this dispute is about an agreement between 2 tenants about how they would share the rent and internet expenses. I find this is a claim in contract, and the CRT has jurisdiction to decide it under its small claims jurisdiction in section 118 of the CRTA.
10. I note that Ms. Thibault submitted 4 items of evidence after the deadline for parties to submit their evidence. Ms. Contini objects to the admissibility of the late evidence because it was available before the deadline. However, I find the late evidence was provided to Ms. Contini before she made her submissions, and I am satisfied that she had the opportunity to comment on it. So, I find there would be no breach of procedural fairness in admitting the late evidence. Given the CRT's mandate to be flexible, I admit the late evidence and will discuss it (to the extent it is relevant) below.

## ISSUES

11. The issues in this dispute are:
  - a. Did Ms. Thibault breach the parties' agreement by moving out early, such that she owes Ms. Contini for her share of the March and April 2021 rent?
  - b. Is Ms. Contini entitled to a set-off against the \$615 she owes Ms. Thibault, for mental distress damages?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, Ms. Thibault, as the applicant, must prove her claims on a balance of probabilities. Ms. Contini bears the same burden to prove her counterclaims. I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to provide context for my decision.
13. It is undisputed that Ms. Thibault approached Ms. Contini in August 2020 about sharing an apartment together in Victoria, British Columbia, from September 1, 2020 to April 30, 2021. Ms. Contini agreed and leased out her own home in Alberta for the same period.
14. Ms. Thibault signed a lease with SR, agreeing to rent SR's apartment for \$3,600 per month, plus \$150 for internet, from September 1, 2020 to April 30, 2021. While neither party provided a copy of the lease, it is undisputed that Ms. Contini did not sign it. However, the evidence shows that both parties signed a *Strata Property Act* Form K as co-tenants of the apartment, and that SR considered Ms. Contini as a co-tenant under the lease.
15. In any event, the parties undisputedly had an oral agreement to share the rent and internet expenses equally. Each month, Ms. Thibault paid SR the full \$3,750 directly, and Ms. Contini reimbursed Ms. Thibault \$1,875 for her half.
16. The evidence shows that the parties' relationship started to deteriorate shortly after they moved in together, with both parties variously threatening to end the co-tenancy.

The parties' text messages show that Ms. Contini raised the possibility of moving out as early as September 19, 2020, and again on October 29, 2020. In a December 21, 2020 text, Ms. Contini told Ms. Thibault to put her request for Ms. Contini to move out in writing. On December 23, 2020, Ms. Contini told Ms. Thibault that she had found new roommates, given Ms. Thibault had by that time indicated she was moving out.

17. Ms. Contini also advised SR in a December 24, 2020 email, that Ms. Thibault was moving out. Ms. Contini said she would like to assume the lease with a different co-tenant. Ms. Thibault responded to SR that she intended to fulfil the tenancy until April 30, 2021, according to her lease. Nevertheless, Ms. Thibault later advised SR in a January 16, 2021 email that she had purchased a condominium and would like to end her tenancy as of February 15, 2021.
18. The evidence shows that as of January 16, 2021, Ms. Contini had paid Ms. Thibault 3 separate \$420 installments towards her share of the January rent and utilities, for a total of \$1,260. It is undisputed that Ms. Contini did not pay Ms. Thibault anything further after January 16, 2021. This means Ms. Contini still owes Ms. Thibault the claimed \$615 for January 2021 rent and internet expenses. I find Ms. Contini must pay Ms. Thibault that amount.
19. I find that SR agreed to end Ms. Thibault's tenancy as of February 28, 2021, and that each party paid SR separately for their respective half of the February 2021 rent and internet expenses. Ms. Thibault ultimately moved out of the apartment on February 12, 2021. I infer that Ms. Contini then signed her own agreement with SR to continue renting the apartment, though that agreement is not in evidence.
20. The question is whether Ms. Contini has proven Ms. Thibault breached their agreement by moving out early, such that Ms. Contini is entitled to damages for breach of contract. For the following reasons, I find she has not.
21. I accept that the parties orally agreed to share accommodation until April 30, 2021. However, I find their agreement did not specifically contemplate what would happen if either party wanted to move out early. The CRT has previously implied reasonable

notice terms in co-tenant agreements (see for example *Phillips v. Roberts*, 2021 BCCRT 109 and *Catia v. Scotchman*, 2021 BCCRT 677). I find this approach persuasive, and I apply it here.

22. I find that it was an implied term of the parties' agreement that if either party wanted to move out before April 30, 2021, they would provide reasonable notice before ending their agreement, so that the other party could secure new accommodation or a new roommate, if they wished. Under the circumstances, I find one month is a reasonable notice period.
23. While Ms. Contini says that Ms. Thibault never provided her with notice that she was moving out early, I find that Ms. Contini was copied on SR's January 17, 2021 email confirming that Ms. Thibault was ending her tenancy effective February 28, 2021. I find that this email constituted notice to Ms. Contini that Ms. Thibault was moving out early, which was more than the required one month's notice. Therefore, I find Ms. Thibault did not breach the parties' agreement by moving out early.
24. Further, even if I had found Ms. Thibault breached the parties' agreement, I note that Ms. Contini had a duty to mitigate her losses. This means Ms. Contini had to act reasonably to prevent avoidable expenses or costs resulting from Ms. Thibault's breach of contract. Given that SR agreed to end the parties' tenancy as of February 28, 2021, I find Ms. Contini did not have to remain there until April 30. She could have moved somewhere with lower rent or found new roommates to assist with the rent. In fact, Ms. Thibault provided a screenshot of Ms. Contini's Facebook page dated April 17, with a caption referring to her having a new roommate. So, I find it is likely that Ms. Contini did secure a new roommate before April 30, 2021.
25. For all these reasons, I find Ms. Thibault does not owe Ms. Contini for half of the apartment's monthly rent for March and April 2021. I dismiss Ms. Contini's counterclaim.
26. As noted, Ms. Contini also says in her Dispute Response that she seeks \$5,000 in damages for Ms. Thibault's intimidating behaviour from the time she vacated the

apartment on February 12, 2020, until her tenancy formally ended on February 28, 2020. Ms. Contini alleges Ms. Thibault entered the apartment several times unannounced and acted in an aggressive manner, which she says negatively impacted her emotional and mental wellbeing. However, Ms. Contini did not include any claim for mental distress in her counterclaim Dispute Notice. In the absence of a counterclaim for mental distress, I infer that Ms. Contini claims a set-off of the \$615 she undisputedly owes Ms. Thibault.

27. Damages for mental distress can arise under a contract claim if there is evidence of a serious and prolonged disruption that is more than ordinary emotional upset and distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA 253).
28. While I am prepared to find it was an implied term of the parties' agreement that they would treat each other with respect and not intimidate each other during their co-tenancy, I find Ms. Contini has not proven she suffered a serious and prolonged emotional disruption from Ms. Thibault's alleged behaviour. Ms. Contini did not suggest her upset lasted beyond the 2-week period in February, and she provided no supporting evidence that she sought medical or professional assistance to deal with the alleged mental distress. So, to the extent that Ms. Contini claims a set-off for mental distress, I dismiss her claim.
29. The *Court Order Interest Act* applies to the CRT. Ms. Thibault is entitled to pre-judgement interest on the \$615 from January 31, 2021 (a date I find reasonable for Ms. Contini to have paid her full share of the January rent), to the date of this decision. This equals \$1.99.
30. 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 find Ms. Thibault is entitled to reimbursement of \$125 in CRT fees. Ms. Contini was unsuccessful in her counterclaim, and so I dismiss her claim for CRT fees. Neither party claimed any dispute-related expenses.

## ORDERS

31. Within 30 days of the date of this decision, I order Ms. Contini to pay Ms. Thibault a total of \$741.99, broken down as follows:
  - a. \$615 in debt,
  - b. \$1.99 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
32. Ms. Thibault is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
33. I dismiss Ms. Contini's counterclaims.
34. 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.
35. 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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Kristin Gardner, Tribunal Member

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Amendment Notes:

[i] Amended under CRTA section 64 to correct inadvertent party name error in paragraph 2.