



Civil Resolution Tribunal

Date Issued: November 19, 2021

File: SC-2020-009873

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tamuno v. Shannon*, 2021 BCCRT 1223

BETWEEN:

LOLIA TAMUNO

APPLICANT

AND:

JAIME SHANNON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about amounts allegedly owed following an eviction. The parties were roommates. The applicant, Lolita Tamuno, paid a damage deposit and rent to the respondent, Jaime Shannon, for accommodations they shared together with other roommates. Ms. Shannon evicted Miss Tamuno. Miss Tamuno claims \$889.03: \$167.76 for unused rent she paid, \$11.27 for unused utilities, \$700 for double the

amount of the \$350 damage deposit, and \$10 for emotional distress. Ms. Shannon says she was entitled to evict Miss Tamuno because she allegedly disturbed the peace and left the accommodations unclean, so Ms. Shannon owes nothing.

2. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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.
7. Under the *Residential Tenancy Act* (RTA), the Residential Tenancy Board (RTB) has exclusive jurisdiction to decide disputes involving landlord and tenant rights and

obligations under the RTA. However, I find the RTA does not apply to this dispute, because the RTB refuses jurisdiction over “roommate disputes” such as this one. Further, although it is not entirely clear whether Ms. Shannon was the house’s owner, RTA section 4(c) says the RTA does not apply to living accommodation in which a tenant shares bathroom or kitchen facilities with the owner. The parties undisputedly shared kitchen facilities. For these reasons, I find the dispute is within the CRT’s small claims jurisdiction over debt and damages as set out in section 118 of the CRTA.

ISSUES

8. The issues in this dispute are:
 - a. Was Ms. Shannon entitled to evict Miss Tamuno?
 - b. If not, is Ms. Shannon responsible for paying Miss Tamuno the claimed \$889.03 for unused rent, unused utilities, damage deposit refunds, and emotional distress?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Miss Tamuno must prove her claims on a balance of probabilities (meaning “more likely than not”). 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. Ms. Shannon chose not to submit any evidence or additional arguments beyond those in her Dispute Response, despite having the opportunity to do so.
10. It is undisputed that Ms. Shannon evicted Miss Tamuno effective December 23, 2020, on 14 days’ notice. There is no written room rental agreement between the parties in evidence. Based on the parties’ submissions and Ms. Shannon’s eviction letter to Miss Tamuno, discussed further below, I find that the parties’ rental agreement was verbal, and was on a month-to-month basis. Miss Tamuno submitted a list of “House Rules & Info” that I find mostly relates to the roommates’ responsibility for cleaning

up after themselves. I find neither the house rules nor the correspondence in evidence show the parties' agreement about the amount of rent, use of damage deposits, or any required move-out notice.

11. Based on the parties' submissions, I find that Miss Tamuno undisputedly paid Ms. Shannon a \$350 damage deposit. I find the damage deposit was to be used for any damage Miss Tamuno caused beyond ordinary wear and tear, with any remaining balance refunded. I find it was an implied term of the parties' agreement that either party had to give the other reasonable notice to end the room rental, although they specified no express notice period. The parties do not say what Miss Tamuno's monthly rent was. However, Ms. Shannon does not deny that Miss Tamuno paid rent for the full month of December 2020, or that the pro-rated value of Miss Tamuno's rent between December 23, 2020 and the end of that month is equal to the \$167.76 claimed.
12. Ms. Shannon says she was told that the RTA does not apply to the room rental, so Miss Tamuno is not entitled to the claimed compensation. Although Miss Tamuno is not entitled to statutory remedies under the RTA, I find she may be entitled to compensation under the parties' verbal rental agreement or at common law.

Was Ms. Shannon entitled to evict Miss Tamuno?

13. The question of whether Ms. Shannon was entitled to evict Miss Tamuno is relevant to Miss Tamuno's \$167.76 claim for a partial rent refund. It is undisputed that although Miss Tamuno was evicted on December 23, 2020, Ms. Shannon did not refund any of her December 2020 rent. I find the evidence does not show that the parties agreed no rent refund would be provided for paid rental days after an eviction. Ms. Shannon says she does not have to refund any rent because she evicted Miss Tamuno for causing disturbances, mostly involving her pet cat and disagreements about using shared spaces.
14. Ms. Shannon alleges several types of disturbances and disagreements in her Dispute Response filed at the outset of this proceeding, but her December 9, 2020 eviction

letter to Miss Tamuno provides more limited reasons for the eviction. I find that the actual reasons for the eviction at the time it was implemented are most accurately described in the eviction letter, although I also considered the additional reasons provided in the Dispute Response.

15. Ms. Shannon's eviction letter said that Miss Tamuno disturbed the peace and exhibited "defiant" behaviour when asked to address unspecified "things" in the house. It also alleged that Miss Tamuno failed to keep her cat in her bedroom and that other tenants had complained about cat noise at night. The letter said that Miss Tamuno had not made any attempts to rectify "this", and that unspecified "certain expectations" were not being met. Ms. Shannon wrote that she was terminating the rental agreement for these reasons, and that that Miss Tamuno needed to leave by noon on December 23, 2020.
16. I find the allegations, that Miss Tamuno failed to address unspecified things in the house and to meet unspecified expectations, are unclear and lack necessary detail. Further, I find the submitted evidence does not show that Miss Tamuno failed to meet expectations or address concerns as required, as further explained below.
17. I find the evidence does not show that the parties agreed Miss Tamuno would keep her cat in her bedroom at all times. This is supported by photos Ms. Shannon sent to Miss Tamuno showing the cat in common areas, without complaint at the time. I also find that before the eviction, Miss Tamuno texted that she would address nighttime cat noise by keeping the cat in her room and consulting her veterinarian if necessary. I find the evidence does not show that the nighttime cat noise was so unreasonable and prolonged that it justified Miss Tamuno's eviction.
18. Ms. Shannon also says that Miss Tamuno disrespected Covid-19 safety protocols and sent her texts in the middle of the night. However, there are no late-night texts in evidence, and no further detail or evidence showing that Miss Tamuno failed to follow any particular Covid-19 safety protocol. I place little weight on these unsupported allegations.

19. I find the only applicable expectation about disturbances was the house rule about quiet hours between 11:00 p.m. and 7:00 a.m. As noted, Miss Tamuno's cat sometimes made noise at night, but I found above it was not unreasonable. Further, despite Ms. Shannon's allegations of excessive disturbances, I find the submitted evidence is not sufficient to prove any other specific, unreasonable disturbances that support an eviction. I find that the evidence does not show that Miss Tamuno broke the parties' rental agreement, or violated the house rules to a degree that justified an eviction in the circumstances.
20. Given that an early eviction was not justified, I find that the parties' rental agreement required reasonable notice before a move-out, as noted. The question is, what was reasonable in the circumstances? In an undated text message, Ms. Shannon asked Miss Tamuno to leave. Miss Tamuno texted Ms. Shannon that she would move out by December 31, 2020. In another undated text message, Miss Tamuno says that she gave 1 month notice for that move, which Ms. Shannon does not directly deny. However, on December 9, 2020, Ms. Shannon then said Miss Tamuno had to leave by December 23, 2020, rather than December 31. Ms. Shannon says that people who move out early do not get a pro-rated rent refund, so people who get evicted early should also get no refund. As noted, I found the eviction was not justified.
21. I find Miss Tamuno gave 1 month's notice that she would move out on December 31, 2020. Given that the rental was month-to-month, I find this was sufficient notice in the circumstances. Ms. Shannon says that Miss Tamuno's behaviour was so disruptive that she could not tolerate her presence for "another 2 weeks" and its impacts on other roommates, so she evicted Miss Tamuno 8 days before her December 31, 2020 move-out date, on 14 days' notice. Given my finding that Miss Tamuno's behaviour was not unreasonably disruptive, I find the eviction was not significantly urgent. I find that 14 days' eviction notice for the month-to-month rental was insufficient in the circumstances, and Miss Tamuno did not accept a December 23, 2020 move date.
22. Having reviewed the evidence and submissions, I find that Ms. Shannon did not have a valid basis for evicting Miss Tamuno under the parties' rental agreement and house

rules, and that 14 days' move out notice was not reasonable in the circumstances. I find Ms. Shannon broke the parties' agreement by evicting Miss Tamuno as she did.

Is Ms. Shannon responsible for the claimed \$889.03?

23. Given my finding that Ms. Shannon broke the parties' agreement, I find that Miss Tamuno is entitled to a refund of unused rent following her eviction, from December 23, 2020 to December 31, 2020. I allow her claim for a \$167.76 rent refund.
24. Miss Tamuno says Ms. Shannon cut off her access to the internet at the home, and owes \$11.27 for the time Miss Tamuno had no internet service. Ms. Shannon says there was an issue with the internet service, and that she attempted to send Miss Tamuno \$11.27 by e-transfer. I find that Ms. Shannon admits she owed \$11.27 for failing to provide internet access, and the evidence does not show she paid that amount. So, I allow Miss Tamuno's claim for \$11.27 for unused utilities.
25. Turning to the damage deposit, I note that at common law, the burden is generally on the landlord to prove damage, rather than on a tenant to disprove it. Ms. Shannon says Miss Tamuno did not adequately clean her bedroom and the fridge, but as noted, provided no supporting evidence. Miss Tamuno submitted photos that undisputedly showed pre-existing damage to the home at the time she moved in. She also submitted photos of her move-out cleaning efforts in the shared fridge, kitchen, bathroom, and her bedroom. Based on Miss Tamuno's submitted photos, I find she did not cause any damage and left the home reasonably clean. So, under the parties' agreement, I find Ms. Shannon was required to refund the entire \$350 damage deposit. Miss Tamuno does not explain why she claims double the deposit amount. As noted, the RTA does not apply to this rental, and there is no evidence that a double deposit refund was part of the parties' rental contract. So, I allow Miss Tamuno's claim for a \$350 damage deposit refund, but I dismiss her claim for an additional \$350 deposit amount.
26. Miss Tamuno claims \$10 for emotional distress, because she says Ms. Shannon cut off her internet access around the time of her online final exams and she had to

complete them at her place of work, among other reasons. Although I acknowledge that Miss Tamuno found her interactions with Ms. Shannon upsetting, she has provided no medical or other evidence of her claimed emotional distress. I am not satisfied that Miss Tamuno has established that she suffered legally compensable emotional distress as a result of her interactions with Ms. Shannon. So, I dismiss her claim for emotional distress damages.

27. In summary, I allow Miss Tamuno's claims for a total amount of \$529.03.

CRT FEES, EXPENSES, AND INTEREST

28. The *Court Order Interest Act* applies to the CRT. Miss Tamuno claims \$17.50 in pre-judgment interest. I find that Miss Tamuno is entitled to pre-judgment interest on the \$529.03 owing from the December 23, 2020 eviction date until the date of this decision. This equals \$2.17.

29. Under section 49 of the CRTA, and the 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. Miss Tamuno was partly successful in her claims, so I find she is entitled to reimbursement of the half the CRT fees she paid, which equals \$62.50. Neither party claimed CRT dispute-related expenses.

ORDERS

30. Within 30 days of the date of this decision, I order Ms. Shannon to pay Miss Tamuno a total of \$593.70, broken down as follows:

- a. \$529.03 in debt for a damage deposit and unused rent and utilities,
- b. \$2.17 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

31. Miss Tamuno is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable. I dismiss Miss Tamuno's remaining claims.
32. 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.
33. 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.

Chad McCarthy, Tribunal Member