



# Civil Resolution Tribunal

Date Issued: February 8, 2022

File: SC-2021-004145

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *H.W. (Litigation guardian of) v. G.H.*, 2022 BCCRT 153

**BETWEEN:**

Y.Y. Litigation Guardian for H.W., minor

**APPLICANT**

**AND:**

G.H.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. This dispute is about a homestay agreement.
2. The minor applicant, HW, says she entered a verbal agreement with the respondent, GH, for GH to provide homestay services for her. HW says she pre-paid GH for rent and food, but when she gave notice that she was moving out, GH refused to refund

any of her money for pre-paid services she did not use. HW claims \$4,464, which is made up of \$3,434 for pro-rated rent, \$100 for one month of food, and \$930 for return of her paid damage deposit.

3. GH says his agreement with HW was that she pre-pay the agreed homestay fees 3 months at a time, at the start of each 3-month period. GH says the pre-paid fees were not refundable under their agreement. GH says HW did not provide him with any notice when she moved out, and so he does not owe her anything. GH also says that HW and her boyfriend damaged his property, failed to return his keys, trespassed on his property after moving out, and caused him mental distress. GH did not file a counterclaim.
4. HW is represented by a litigation guardian, YY, whose relationship to HW is unclear on the evidence before me. GH is self-represented.
5. In the published version of this decision, I anonymized the parties' names to protect the minor applicant's identity.

## **JURISDICTION AND PROCEDURE**

6. 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.
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. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal

demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, 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 decided to hear this dispute through written submissions.

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.
10. Generally, the CRT does not take jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the Residential Tenancy Board (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes like this one, and the parties do not say the RTA applies to this dispute. Therefore, I find that this contractual dispute is within the CRT's small claims jurisdiction under section 118 of the CRTA.

## **ISSUE**

11. The issue in this dispute is whether HW is entitled to a refund of any pre-paid homestay fees, and if so, how much?

## EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant HW must prove her claims on a balance of probabilities (meaning “more likely than not”). HW did not provide any evidence or submissions in support of her claims, despite several reminders from CRT staff. GH also filed no evidence. So, I have relied on the Dispute Notice, Dispute Response, and GH’s submissions in coming to my decision. I refer only to what I find is necessary to explain my decision.
13. As noted, it is undisputed that the parties had a verbal agreement for GH to provide homestay services to HW. HW says GH refused to put their agreement in writing, while GH says they did not have a written agreement because HW was a minor and she refused to provide her parents’ or guardian’s contact information.
14. In any event, while harder to prove, a verbal contract is generally enforceable like a written contract. However, here, it is undisputed that HW was a minor when she entered the alleged contract with GH, and given she is represented by a litigation guardian in this dispute, I infer HW is still under the age of 19.
15. Under the *Infants Act*, I find HW cannot be bound by the alleged contract with GH, so it is unenforceable against her. This means that GH cannot rely on the alleged term of their agreement that any pre-paid amounts were non-refundable if HW moved out early. However, while a contract is unenforceable against an infant, under section 19(2) of the *Infants Act*, an infant may enforce a contract against an adult, as if the infant were an adult when the contract was made. So, HW can enforce the contract against GH, and I find she is generally entitled to a refund of amounts she paid for services she did not receive.
16. HW claims a refund for \$3,434 in pre-paid rent from June 3 to July 31, 2021, \$100 for a pre-paid breakfast fee from April 1 to April 31, 2021, and \$930 for a paid damage deposit. GH does not dispute that HW paid him the claimed amounts, so I find that she did.

17. HW says her guardian gave GH notice on May 3, 2021 that she was moving out and ending the homestay agreement, which GH does not dispute. I find HW moved out of GH's residence sometime in May 2021, though the precise date she moved out is not before me. Given HW claims for return of pre-paid rent as of June 3, 2021, I find she gave GH one months' notice, which I find is reasonable under the circumstances. Therefore, I find HW is entitled to a refund of the \$3,434 in pre-paid rent from June 3 to July 31, 2021.
18. However, I find HW has not provided a satisfactory explanation for why she claims a refund of April's breakfast fee when she did not move out until May. While she says in the Dispute Notice that generally the food GH provided was "not good", she provides no other details. GH denies the allegation and says he provided the same food to everyone in the home. I find HW has provided insufficient evidence for me to conclude that GH breached the contract with HW to provide breakfast. So, I find HW has not proven she is entitled to a refund of the claimed \$100 breakfast fee.
19. As for the damage deposit, in a Statement of Facts prepared for this dispute, GH says he agreed to return the \$930 damage deposit in full unless HW caused damage, in which case he could deduct the cost of the damage from the deposit. I find that if GH establishes that HW negligently caused him damage or expense, he would reasonably be entitled to set off the value of the damage or expense from the damage deposit.
20. Given that HW provided no evidence or submissions, she does not dispute GH's allegations that she and her boyfriend "broke things" and failed to return one of GH's keys. However, I find GH has failed to prove the value of the alleged property damage or show what loss he sustained from the failure to return a key. Therefore, I find GH has not established any basis for a set off against the damage deposit.
21. Next, I turn to GH's allegation that HW and her boyfriend "broke into his house" after HW moved out and caused him mental distress. First, I note that GH provided no details of the alleged trespass incident. While I would normally consider drawing an adverse inference against HW for her failure to provide any evidence contradicting

GH's allegation, I find GH has simply provided insufficient information for me to conclude that HW trespassed on his property, or that he would be entitled to damages for the alleged trespass.

22. Finally, I find GH has also provided insufficient evidence of his alleged mental distress. The BC Court of Appeal has held there must be some evidentiary basis for awarding damages for mental distress, showing a serious and prolonged disruption that transcends more than ordinary emotional upset and distress (*Lau v. Royal Bank of Canada*, 2017 BCCA 253). Here, there is no such evidence, and in particular there is no medical evidence. Therefore, I find GH has not established he was entitled to retain any of the \$930 damage deposit, and I order him to refund it to HW.
23. In summary, even though HW provided no evidence or submissions contradicting GH's assertions about the terms of the parties' agreement, I find any agreement between the parties was unenforceable against HW due to her age. Therefore, I find GH must refund HW \$3,434 for pre-paid rent. I also find GH must return HW's \$930 damage deposit. I order GH to pay HW \$4,364.
24. The *Court Order Interest Act* applies to the CRT. HW is entitled to pre-judgement interest on the \$4,364 from May 31, 2021, a date I find is reasonable, to the date of this decision. This equals \$13.63.
25. 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 HW was substantially successful, and she is entitled to reimbursement of \$175 in CRT fees. The parties did not claim any dispute-related expenses, so I order none.

## **ORDERS**

26. Within 30 days of the date of this decision, I order GH to pay HW a total of \$4,552.63, broken down as follows:
  - a. \$4,364 as reimbursement for prepaid rent and a damage deposit,

- b. \$13.63 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

27. HW is entitled to post-judgment interest, as applicable.

28. 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.

29. 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