



Civil Resolution Tribunal

Date Issued: March 8, 2022

File: SC-2021-000548

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pemberton v. Mucci*, 2022 BCCRT 247

BETWEEN:

MICHAELA PEMBERTON

APPLICANT

AND:

HELEN MUCCI

RESPONDENT

AND:

MICHAELA PEMBERTON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant and respondent by counterclaim, Michaela Pemberton, rented a room to the respondent and applicant by counterclaim, Helen Mucci.
2. Miss Pemberton says Ms. Mucci breached the parties' roommate agreement by giving insufficient notice before moving out on January 1, 2021. She seeks \$550 as liquidated damages and another \$550 for insufficient notice. She also claims a further \$1,100 for unpaid rent and utilities for February 2021, for a total of \$2,200.
3. Ms. Mucci says she was not required to give notice for various reasons and says Miss Pemberton's claims should be dismissed. Ms. Mucci counterclaims for the return of her \$550 security deposit, which Miss Pemberton does not contest.
4. Both parties are 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. In some respects, the parties in this dispute call into question each other's credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh

the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to 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. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes like this one, and the parties agree that the CRT should resolve this dispute. So, I find this is a contractual dispute within the CRT's small claims jurisdiction under CRTA section 118.

Production order request

10. In a November 2, 2021 preliminary decision, another CRT member denied Miss Pemberton's request for an order that Ms. Mucci disclose Employment and Persons with Disabilities (EAPWD) forms for the period of September 8, 2020 to March 21, 2021.
11. On November 10, 2021, Miss Pemberton submitted a second production order request and a request to reconsider the November 2 preliminary decision. She requested Employment Insurance statements from September 2020 to February 2021, "emails with resumes attached and sent to your contacts in Hawaii fall and winter 2020 and spring 2021," and "emails, text messages and phones calls regarding your potential job offer in Hawaii, fall 2020." Miss Pemberton was given additional time to submit her evidence and arguments. I have considered Miss Pemberton's second production order and reconsideration requests. I decline to grant Miss

Pemberton's requests for 2 reasons. First, I find such orders would be disproportionate given the amount of money at stake and would cause undue delay, inconsistent with the CRT's mandate for speedy dispute resolution. Second, I find the requested evidence would not assist Miss Pemberton, which I explain when addressing her arguments below.

Additional requested remedies

12. In submissions, Miss Pemberton asked for "extraordinary compensation" of \$3,350, citing "tortious interference", breach of the duty of good faith performance, and punitive damages. For the reasons that follow, I decline to consider these potential claims and remedies.

13. The CRTA and CRT rules permit an applicant to request to amend the Dispute Notice to add new claims or remedies. The purpose of a Dispute Notice is to define the issues and provide notice to the other party of the claims and remedies sought against them. CRT rule 1.19 says the Dispute Notice will not be amended after the dispute has entered the CRT decision process except where exceptional circumstances apply. I find no exceptional circumstances here that would warrant adding new claims at this late stage in the proceeding. I also find it would undermine the purpose of the CRT's mandatory facilitation process to add new claims and remedies, without notice, after facilitation has ended: see the non-binding but persuasive decision *Graham v. The Owners, Strata Plan LMS 516*, 2021 BCCRT 1322.

ISSUES

14. As noted, Miss Pemberton does not contest that she must credit Ms. Mucci for the \$550 security deposit. Accordingly, the only issues in dispute are:
 - a. Is Ms. Mucci required to pay rent for January or February 2021?
 - b. Is Ms. Mucci required to pay "liquidated damages" for ending the roommate agreement early?

EVIDENCE AND ANALYSIS

15. As the applicant in this civil proceeding, Miss Pemberton must prove her claims on a balance of probabilities, meaning more likely than not. Ms. Mucci has this same burden to prove her counterclaim. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
16. Miss Pemberton rented the rental unit from a landlord. Ms. Mucci rented the largest bedroom in the unit from Miss Pemberton.
17. On September 21, 2020, Ms. Mucci paid Miss Pemberton a \$550 security deposit. On September 30, the parties signed a "Residential Rental Agreement" (roommate agreement). The roommate agreement was for a fixed term that started on September 30 and ended on January 31, 2021. The rent was \$1,100, which included \$100 nominally for utilities. Rent was due September 30, then November 1 and each month afterward on the first.
18. The parties were not well-suited as roommates. On December 17, 2020, Ms. Mucci emailed Miss Pemberton to advise that she would move out February 1, 2021, and possibly earlier if she found a suitable place to live sooner. On December 30, Ms. Mucci advised Miss Pemberton by email that she was moving out on January 1, 2021. It is undisputed that Ms. Mucci moved out on January 1, 2021.
19. I find Ms. Mucci gave 2 days' notice on December 30. Even if her December 17 notice of a possible early move were considered effective, it did not satisfy the roommate agreement's requirement that Ms. Mucci give 1 month's notice of early termination.
20. Ms. Mucci argues that Miss Pemberton verbally agreed on December 17 that it was "okay" to break the roommate agreement as Miss Pemberton also wanted Ms. Mucci out. Miss Pemberton denies saying it was okay, and I find it unproven that she did. Even if she said "okay", I find it was likely simply an acknowledgment that Ms. Mucci was moving out early and did not amount to an agreement to waive the notice requirement. The intent to waive a contractual right must be communicated clearly: see *1050438 B.C. Ltd. v Penguin Enterprises Ltd.*, 2019 BCSC 2138.

21. Ms. Mucci says she was forced to move out due to Miss Pemberton's conduct, which she describes as harassment. The parties describe each other's behaviour as abusive, terrorizing, antagonizing, and manipulative, which I find reflects that they did not get along. To the extent that Ms. Mucci argues that Miss Pemberton's conduct amounted to a fundamental breach of contract, I find that unproven.
22. Ms. Mucci argues that because the roommate agreement in several places refers to the RTA, its key terms, such as those about notice, do not apply to her. She also says the Tenant Resource & Advisory Centre told her that roommates do not need to give notice. However, the law requires roommates to comply with the terms of their agreements. The roommate agreement explicitly addresses notice and is not dependent on the RTA.
23. Clause 31 of the roommate agreement is titled "Giving Notice" and says Ms. Mucci will give 1 full calendar month's notice before moving out. She did not, so I find she must pay January's \$1,100 rent. I find she is not required to pay February's rent because she gave 1 full month's notice before moving out, and in any event the agreement was to end January 31.
24. Miss Pemberton's claim for February rent hinges on an argument that Ms. Mucci induced her to enter into the roommate agreement by engaging in fraud and misrepresentation. Miss Pemberton says she originally advertised the room looking for an 8-month agreement, but Ms. Mucci negotiated a 4-month agreement because she was considering moving to Hawaii in the spring for a possible job opening.
25. A misrepresentation is a false statement of fact made during negotiations that would induce a reasonable person to enter into the contract. It must also result in a detriment to the person who relied on it. The difficulty for Miss Pemberton is that she knew when she signed the roommate agreement that the effect of Ms. Mucci's representation was that the contract would be for a 4-month term. At that point, Miss Pemberton had the option of rejecting Ms. Mucci's offer and insisting on an 8-month term or finding a different roommate. Miss Pemberton knew she had to find another roommate for February 1, 2021. So, I find Miss Pemberton did not suffer any detriment. This is part

of why I have declined to grant Miss Pemberton's request for a production order for documents related to Ms. Mucci's potential Hawaii job offer. Even if the documents proved that Ms. Mucci did not have a potential job offer in Hawaii, that fact would not help Miss Pemberton establish an actionable misrepresentation. I dismiss Miss Pemberton's claim for February rent.

26. Miss Pemberton also claims liquidated damages of \$550. Clause 8 of the roommate agreement says if Ms. Mucci "breaches this fixed term residency before the end of the original term (ie: gives notice to move out before January 31, 2021)," then Miss Pemberton may treat the agreement as being at an end. In such an event, Ms. Mucci was required to pay half a month's rent (\$550) as damages toward the administration costs of re-renting the unit even if there is a new renter moving in on the first of the month. As Ms. Mucci gave notice December 30, 2020, to move out January 1, 2021, I find this clause is applicable. I find Ms. Mucci must pay \$550.
27. In summary, I have found that Ms. Mucci owes \$1,100 for January's rent and \$550 in damages. Deducting the agreed \$550 deposit refund, I find Ms. Mucci owes Miss Pemberton \$1,100, and I order her to pay that amount. I dismiss Ms. Mucci's claim for interest on the security deposit because the agreement did not provide for interest.
28. The *Court Order Interest Act* (COIA) applies to the CRT. Miss Pemberton is entitled to pre-judgment interest on the \$1,100 from January 1, 2021 when the rent was due until the date of this decision. This equals \$5.86. There is no COIA interest on the \$550 security deposit because it was set off against the \$550 liquidated damages upon termination of the roommate agreement.
29. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recover their CRT fees and reasonable dispute-related expenses. Miss Pemberton paid \$125 in CRT fees and claims \$15.90 for dispute-related expenses. The expenses were for scanning services and a USB stick, which I find were reasonably incurred and supported by a receipt. Generally, where a party is partially successful like Miss Pemberton, the CRT awards partial compensation for CRT fees and expenses in circumstances, typically around half. Ms. Mucci's counterclaim was

successful, and she paid \$75 in CRT fees. In the circumstances, I find it appropriate that the parties pay their own fees and expenses, so I make no order.

ORDERS

30. Within 30 days of the date of this order, I order Ms. Mucci to pay Miss Pemberton a total of \$1,105.86, broken down as follows:

a. \$1,100 in damages, and

b. \$5.86 in pre-judgment interest under the *Court Order Interest Act*.

31. Miss Pemberton is entitled to post-judgment interest, as applicable.

32. I dismiss both parties' remaining claims.

33. 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.

34. 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.

Micah Carmody, Tribunal Member