



Civil Resolution Tribunal

Date Issued: March 24, 2022

File: SC-2021-005139

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sarauer v. Levesque*, 2022 BCCRT 332

BETWEEN:

ADAM SARAUER

APPLICANT

AND:

LEO LEVESQUE, JOYCE BORTHWICK, and SCOTT TURNER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a roommate dispute. The applicant Adam Sarauer formerly lived with the respondents in shared accommodation. The named respondents are Leo Levesque,

Joyce Borthwick, and Scott Turner. Mr. Sarauer says the respondents variously harassed him, ate some of his food, and yelled at him. Mr. Sarauer claims \$352.50 in damages, as discussed further below.

2. Mr. Turner did not file a Dispute Response, as also discussed further below. Ms. Borthwick was the landlord who also lived in the home. Mr. Levesque and Ms. Borthwick deny treating Mr. Sarauer improperly and say they owe him nothing.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. CRTA section 39 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.
6. CRTA section 42 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.

7. 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.

Residential Tenancy Act – jurisdiction

8. 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, which is the situation between Mr. Sarauer and Mr. Levesque and Mr. Turner. So, I find the RTA does not apply to Mr. Sarauer's dispute against these 2 other tenants. Rather, I find the CRT has jurisdiction over Mr. Sarauer's claims against them under its CRTA jurisdiction over damages.
9. Ms. Borthwick was undisputedly the tenants' landlord. The evidence shows Ms. Borthwick shared the home with the tenants. RTA section 4 says tenancy agreements where the tenant shares a kitchen or bathroom with the landlord are excluded from the RTA. So, I find the RTA does not apply to Mr. Sarauer's tenancy agreement with Ms. Borthwick, and as above this claim falls under the CRT's CRTA section 118 jurisdiction.

ISSUE

10. The issue in this dispute is whether Mr. Sarauer is entitled to any compensation from any of the respondents for unused rent, unused Wifi, a non-refunded portion of a security deposit, harassment, and for food.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Sarauer must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the

parties' submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Mr. Levesque chose not to file any documentary evidence or arguments, despite having the opportunity to do so.

12. I will first address Mr. Turner's status. At the time in question, he undisputedly lived in the same home as the other respondents. I note Mr. Sarauer gave the service address for all 3 respondents, with Mr. Turner's being one digit different in the street address than Mr. Turner's and Ms. Borthwick's. There is no explanation for the difference.
13. Mr. Turner did not file a Dispute Response, and so technically is in default. In the circumstances here, I am not prepared to assume his liability, as generally occurs with defaults. I say this because the bulk of Mr. Sarauer's claims in substance are against Ms. Borthwick as landlord, with respect to refunds on unpaid rent, unused Wifi, and the unrefunded portion of his security deposit. Further, as discussed below, I find no legal basis for most of the rest of Mr. Sarauer's claims and otherwise find his damages unproven.
14. I turn to the relevant chronology. I note Mr. Sarauer does not provide a breakdown of how he arrives at the claimed \$352.50 figure.
15. Part of Mr. Sarauer's claim description is that Mr. Levesque yelled at him and that Mr. Levesque and Mr. Turner had a discussion that Mr. Sarauer says was "embellished unproductive and deceptive of my character" (quote reproduced as written). Mr. Sarauer says he felt Mr. Turner gave off "a presence of contempt" so Mr. Sarauer kept quiet while Mr. Turner was sleeping. I find these allegations amount to harassment claims. There is no recognized tort of harassment in BC (see *Total Credit Recovery v. Roach*, 2007 BCSC 530). So, I will make no findings or order related to that alleged harassment, other than to note Mr. Sarauer provided no supporting evidence apart from his own submissions.
16. Mr. Sarauer says "A" ate his breakfast sandwich one day and took a bite out of another and replaced in the fridge. I do not know who A is. Mr. Sarauer also alleges

an avocado “was missing” and that Mr. Levesque ate some of his rice. Mr. Levesque says the rice was left behind by a former tenant for all remaining tenants to use. While Mr. Sarauer denies this, I find he has not proven otherwise. Even if Mr. Levesque had mistakenly eaten some of Mr. Sarauer’s rice or eaten part of a sandwich, and even if Ms. Borthwick ought to have known this as Mr. Sarauer alleges, I would have concluded this was trivial and not warranting compensation.

17. Given the above, I dismiss Mr. Sarauer’s claims against Mr. Levesque and Mr. Turner as unproven.
18. I turn then to the balance of Mr. Sarauer’s claim, which is about unused rent, an unrefunded portion of his security deposit, and unused Wifi. I find these aspects of the claim are against Ms. Borthwick in her capacity as landlord. In a submitted Statement of Facts, Mr. Sarauer and Ms. Borthwick agree:
 - a. On around April 1, 2021, Mr. Sarauer rented a room from Ms. Borthwick for \$550 per month.
 - b. Mr. Sarauer paid Ms. Borthwick a \$275 security deposit.
 - c. On around April 30, 2021, Ms. Borthwick gave Mr. Sarauer a notice to end tenancy, requiring him to move out by June 1, 2021.
 - d. Mr. Sarauer moved out on around May 15, 2021.
 - e. Ms. Borthwick refunded Mr. Sarauer \$137.50 as partial rent for May, as she was able to re-rent the room for the rest of May. This refund is supported by an e-transfer record in evidence.
 - f. Ms. Borthwick returned \$185 to Mr. Sarauer as a partial security deposit refund after deducting \$90 for cleaning costs and repairs. This \$185 refund is supported by an e-transfer record in evidence.
19. It is undisputed Ms. Borthwick evicted Mr. Sarauer for noise and unreasonably disturbing her and the other tenants. Mr. Sarauer admits his noise but argues the

other tenants on some occasions were noisier than him. In the circumstances, I find Ms. Borthwick gave Mr. Sarauer reasonable notice and in any event he chose to leave early and agrees he was refunded the unused May rent. I dismiss the rent aspect of his claim.

20. As for the Wifi, I note “internet” was not included in Mr. Sarauer’s lease agreement and Mr. Sarauer submitted no evidence what he paid for Wifi at the tenancy address for May, if anything. So, I find he has not proven any loss with respect to Wifi. I dismiss the Wifi aspect of Mr. Sarauer’s claim.

21. Finally, I turn to the security deposit aspect of Mr. Sarauer’s claim. Ms. Borthwick submitted a May 19, 2021 receipt issued in her name, for \$40 of “full cleaning of room” at \$20 per hour and \$50 for repairing dents and 3 holes in the wall. Mr. Sarauer does not dispute he caused this damage or left the room unclean, so I accept that he did. I find the \$90 reasonable in the circumstances. So, I find Mr. Sarauer is not entitled to any further refund from his security deposit. Given all the above, I dismiss Mr. Sarauer’s claim entirely.

22. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Sarauer was not successful in this dispute, I dismiss his claim for reimbursement of paid CRT fees. The respondents did not pay fees or claim expenses.

ORDER

23. I dismiss Mr. Sarauer’s claims and this dispute.

Shelley Lopez, Vice Chair