



Civil Resolution Tribunal

Date Issued: April 6, 2022

File: SC-2021-006783

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yeung v. Yiu*, 2022 BCCRT 383

BETWEEN:

DOCILIS OVEY YEUNG

APPLICANT

AND:

SHANG-EN YIU

RESPONDENT

AND:

OVEY YEUNG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Laylí Antinuk

INTRODUCTION

1. This is a dispute between former roommates.
2. In the main claim, the applicant, Docilis Ovey Yeung, says the respondent, Shang-en Yiu, should pay her a total of \$5,000 in damages for harassment, a rent refund, and her damage deposit's return. Mr. Yiu denies harassing Miss Yeung and says he already refunded Miss Yeung \$400 in paid rent. He also says she is not entitled to the damage deposit's return.
3. In the counterclaim, Mr. Yiu says Miss Yeung negligently failed to be a "fitting roommate" and attempted to harm his dog. Mr. Yiu also says Miss Yeung should reimburse his eviction-related expenses. He seeks a total of \$5,000 in damages. Miss Yeung denies Mr. Yiu's counterclaims.
4. The parties represent themselves.
5. As explained below, I allow Miss Yeung's claim for her damage deposit's return. I dismiss the rest of her claims, and Mr. Yiu's counterclaims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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 parties that will likely continue after the CRT process has ended.
7. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate in this case. I find I can properly assess and weigh the evidence and submissions without resort to an oral hearing.

8. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way.
9. Where permitted under CRTA section 118, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also make an order that includes any other appropriate terms or conditions.
10. I note the applicant in the main claim is named “Docilis Ovey Yeung” but, in the Dispute Notice for the counterclaim, Mr. Yiu identified her as “Ovey Yeung”. I have reflected this variance in the style of cause above.

Preliminary matters – Residential Tenancy Act and jurisdiction

11. In general, residential tenancy disputes fall within the Residential Tenancy Branch (RTB)’s exclusive jurisdiction under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes. This dispute is between roommates, so I find that it fits squarely within the CRT’s jurisdiction over debt and damages rather than the RTB’s jurisdiction over residential tenancy issues. I have proceeded on this basis.
12. I also note that, as explained further below, the parties’ roommate agreement incorporated certain RTA terms. This means that those RTA terms became binding contractual terms regardless of the fact that the RTB declines jurisdiction over roommate disputes.

ISSUES

13. The issues in this dispute are:
 - a. Is Mr. Yiu entitled to reimbursement for eviction-related expenses?
 - b. Is Miss Yeung entitled to the return of her damage deposit and paid rent?

- c. Is Mr. Yiu entitled to damages because Miss Yeung negligently failed to be a “fitting” roommate?
- d. Is Miss Yeung entitled to damages for harassment?

EVIDENCE AND ANALYSIS

14. As the applicant in this civil proceeding, Miss Yeung must prove her claims on a balance of probabilities. Mr. Yiu bears the same burden of proof for his counterclaims. I considered all the parties’ evidence and arguments but refer only to what is necessary to explain my decision.
15. I begin with the undisputed facts. On June 19, 2021, the parties signed a roommate tenancy agreement (contract). The contract is a standard form RTB Residential Tenancy Agreement with an attached addendum. The contract says Mr. Yiu may end the tenancy only for the reasons and only in the manner set out in the RTA. It also says that to end the tenancy, Mr. Yiu must use the RTB’s approved “notice to end a tenancy” form (form). In addition, the contract says Miss Yeung agrees to move out within 48 hours if she fails to comply with the contract’s terms after Mr. Yiu gives her a warning. The contract also says Miss Yeung will clean up after herself, wash her dishes after her meals, ensure common areas are “kept clean” and will “not feed Paris any human food.” Paris is Mr. Yiu’s dog.
16. Miss Yeung paid Mr. Yiu a \$400 damage deposit and moved into his house on the day the parties signed the contract. Less than 2 months later, on August 16, 2021, Mr. Yiu evicted Miss Yeung by posting a letter on her bedroom door telling her to vacate within 48 hours. He did not provide notice using the form as required by the contract. After posting the eviction letter on her door, Mr. Yiu hired an eviction company and a lawyer to deal with the eviction. Miss Yeung ultimately moved out on September 2, 2021. None of this is disputed.

Is Mr. Yiu entitled to reimbursement for eviction-related expenses?

17. Invoices and receipts in evidence show that Mr. Yiu paid an eviction company and a lawyer a total of \$2,043 for their assistance with his eviction of Miss Yeung. He says Miss Yeung should reimburse these expenses because the eviction was her fault since she breached the contract by not cleaning properly and leaving human food out where Paris could access it. I disagree. My reasons follow.
18. Mr. Yiu submitted numerous photos to support his claim that Miss Yeung breached the contract by not cleaning properly. I find that the photos primarily show pots and dishware with minor oil and water residue left on them after being washed. A few photos also show food/oil residue on the stovetop and countertops. One photo shows a small speck of food left in an otherwise clean pot. I acknowledge that some of these photos show cleaning deficiencies. However, other photos just appear to show small amounts of water in pots that otherwise look clean (i.e. the washed pots are not perfectly dry). There are also a few photos that show recyclable take-out containers on the table or in the garbage instead of properly sorted in the recycling bins.
19. I find all the above deficiencies relatively minor and am not satisfied that they show Miss Yeung breached the contract's terms. The contract does not require Miss Yeung to keep dishes and common areas perfectly spotless at all times, instead it requires things to be "kept clean." I find this means **reasonably** clean (not perfectly clean) and do not accept that minor cleaning deficiencies breach the contract. Nor do I accept that throwing recycling in the garbage qualifies as not keeping things clean. The contract does not say anything about garbage and recycling sorting.
20. Further, I find that nothing in the evidence shows Miss Yeung fed Paris human food in breach of the contract. As noted above, the contract requires that Miss Yeung "not feed Paris any human food." I interpret this term to mean that Miss Yeung must not purposefully feed Paris human food. I say this because "feed" means "to give food to" (see Dictionary.com), which I find implies an intentional, purposeful act.

21. Notably, Mr. Yiu does not claim that Miss Yeung purposefully fed Paris human food. Instead, he says she dropped food on the floor or left food unattended. He provides photos and texts to support his claims. One photo shows a small piece of a vegetable on the floor. I infer that this food fell on the floor at some point when Miss Yeung used the kitchen. I am not satisfied that this breaches the contract. I say this because I find that accidentally dropping food on the ground is different than purposefully feeding a dog human food. Similarly, a photo and text messages in evidence show that when Miss Yeung was not home, Paris went into her bedroom and ate food she had left on a coffee table. I am not satisfied that Miss Yeung breached the contract by leaving food on a table in her own room. I note that the contract does not require Miss Yeung to keep her door closed or otherwise prevent Paris from entering her room. Neither of these examples show that Miss Yeung fed Paris human food.
22. In short, I find that Miss Yeung did not breach the contract's terms. So, I find Mr. Yiu was not entitled to evict her. It follows that I find he is not entitled to reimbursement of his eviction-related expenses.
23. Even if Miss Yeung had breached the contract, I find that Mr. Yiu did not give her notice in the manner required by the contract. So, I would not have been persuaded she should reimburse his eviction-related expenses in any event. I say this for 2 reasons. First, he did not use the form. Second, as noted above, the contract says Mr. Yiu may end the tenancy only for the reasons and only in the manner set out in the RTA. The RTA only permits a landlord to end a tenancy for cause if the landlord gives at least 1 months' notice (see RTA section 47(2)). Mr. Yiu undisputedly did not give Miss Yeung 1 months' notice. Instead, he gave her 48 hours' notice.
24. I dismiss this aspect of Mr. Yiu's counterclaims.

Is Miss Yeung entitled to the return of her damage deposit and paid rent?

25. The parties agree that Mr. Yiu returned \$400 to Miss Yeung after she moved out. I find that this \$400 refund could be either a return of Miss Yeung's damage deposit (which was \$400), or the return of prorated rate. I say this because Miss Yeung's rent

was \$800 per month and the parties agree she only needed to pay half a month's rent for August 19-September 2.

26. Miss Yeung says the \$400 was her damage deposit's return. Mr. Yiu says it was a return of prorated rent since she vacated before the tenancy's month end. He says he did not return her damage deposit because she damaged his home. I accept Mr. Yiu's submission on this point because it is consistent with his evidence and submissions about damage to his home. Given this, I find that Miss Yeung already received a return of prorated rent.
27. So, the remaining question is whether Miss Yeung is entitled to her damage deposit's return. I find that she is. I say this because I am not satisfied that she caused any damage to the property beyond reasonable wear and tear. Notably, the contract says Miss Yeung "is not responsible for reasonable wear and tear" to the property. As discussed below, I find that the evidence shows that, at most, Miss Yeung caused reasonable wear and tear to the property.
28. Mr. Yiu submitted 2 photos to prove that Miss Yeung damaged her room. One shows a slight discolouration and lumpiness in a small paint patch on the wall. Mr. Yiu says this is "damage" Miss Yeung tried to repair poorly. I find this damage extremely minor and note that it is hardly visible even in a photo taken at close range. The other photo shows what I find are very minor marks on a door frame caused by Miss Yeung hanging a small, metal over-the-door hook set. I also find this damage extremely minor. I find that neither photo shows anything other than minor, reasonable wear and tear, which the contract says Miss Yeung is not reasonable for.
29. Given this, I find that Mr. Yiu must reimburse Miss Yeung's \$400 damage deposit.

Did Miss Yeung negligently fail to be a "fitting" roommate?

30. Mr. Yiu claims that Miss Yeung negligently failed to be a "fitting" roommate and attempted to harm Paris. To prove negligence, Mr. Yiu must show that:
 - a. Miss Yeung owed him a duty of care,

- b. Miss Yeung breached the standard of care,
- c. He sustained damage, and
- d. Miss Yeung's breach of the standard of care caused the damage.

See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

31. I accept that Miss Yeung owed Mr. Yiu a duty of care as a roommate. I find that Miss Yeung had a duty to take reasonable care of Mr. Yiu's home and possessions, including his dog. However, I am not satisfied that Miss Yeung breached the standard of care or caused Mr. Yiu any damage.
32. First, I am not satisfied that Miss Yeung was negligent when it comes to Paris. Mr. Yiu provides text messages to show that Paris threw up on occasion during Miss Yeung's brief tenancy. He speculates that this was caused by Miss Yeung. I find this speculation unsupported by evidence. Nothing in the evidence shows that Paris stopped throwing up after Miss Yeung moved out, or never threw up before she moved in. I find it common knowledge that dogs throw up on occasion. Mr. Yiu submitted no veterinary records or other objective evidence to show that Paris was violently or unusually ill during Miss Yeung tenancy. I acknowledge that Miss Yeung left food on a coffee table in her room, as discussed above, and that Paris ate the food. However, I am not persuaded that Mr. Yiu suffered damage because of this episode. I say this because there is no evidence to show, for example, that Mr. Yiu took Paris to the vet and/or purchased medicine for Paris afterwards.
33. Mr. Yiu also provided a photo that shows a single, small ibuprofen pill on the floor in his home. He speculates that Miss Yeung dropped this pill and says it could have harmed Paris. Again, I find this speculation unproven. I find that the pill could have been dropped by anyone in the home, including a guest or Mr. Yiu's sister (who also lived in the home). Even if Miss Yeung did drop the pill, I find that Paris did not eat it, so clearly was not harmed by it.

34. I now turn to the remainder of Mr. Yiu's negligence claim.
35. As noted, he alleges Miss Yeung negligently failed to be a "fitting" roommate. He alleges that she failed to keep common areas and shared household items clean and damaged her room. I disagree for the reasons outlined above. I find that the photographic evidence shows some minor cleaning deficiencies, but I am not satisfied that they amount to a breach of the applicable standard of care, which requires reasonableness not perfection. Similarly, as discussed above, I do not find that Miss Yeung caused any damage to her room beyond reasonable wear and tear. I find no breach of the standard of care in relation to cleaning or alleged damage.
36. Mr. Yiu also says that Miss Yeung failed to respect his belongings. For support, he submitted a photo of Miss Yeung or 1 of her guests playing a piano in the shared living room. He says this is his piano. However, I am not satisfied that using a piano in a shared space breaches the standard of care in the circumstances. There is no evidence to show that Mr. Yiu told Miss Yeung she must not use the piano prior to this photograph being taking and there are no visible signs anywhere near the piano asking people not to use it. Absent this sort of evidence, I do not find the use of a piano in a shared space unreasonable. Even if I did, I find that the piano's use did not cause Mr. Yiu any damage. Mr. Yiu also submitted a text message in which his sister accused Miss Yeung of using her hairdryer. Miss Yeung texted back saying she did not use the hair dryer. Regardless of whether Miss Yeung used the hairdryer, there is no evidence to show that Mr. Yiu suffered damage as a result.
37. In short, I find that Mr. Yiu did not prove that Miss Yeung negligently failed to be a "fitting" roommate. I dismiss this aspect of his counterclaim.

Is Miss Yeung entitled to damages for harassment?

38. Miss Yeung claims that Mr. Yiu harassed her in text messages and phone calls. There is no recognized tort of harassment in BC. See *Total Credit Recovery v. Roach*, 2007 BCSC 530. Additionally, the contract says nothing whatsoever about harassment. So,

I make no findings or order related to Mr. Yiu's alleged harassment of Miss Yeung. I dismiss this aspect of Miss Yeung's claim.

Interest and CRT fees

39. The *Court Order Interest Act* applies to the CRT. I find that Miss Yeung is entitled to pre-judgment interest on her \$400 damage deposit from September 2, 2021, the day she moved out, to this decision's date. This equals \$1.07.

40. I also find that Miss Yeung is entitled to reimbursement of half her CRT fees (\$87.50) because she was partially successful in this dispute. She claims no dispute-related expenses, so I make no order about that. I dismiss Mr. Yiu's claim for CRT fee reimbursement because he was unsuccessful on his counterclaims.

ORDERS

41. Within 30 days of this decision's date, I order Mr. Yiu to pay Miss Yeung a total of \$488.57, broken down as follows:

- a. \$400 as reimbursement of her damage deposit,
- b. \$1.07 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fee reimbursement.

42. Miss Yeung is entitled to post-judgment interest, as applicable.

43. I dismiss Miss Yeung's harassment claim and all Mr. Yiu's counterclaims.

44. Under CRTA section 48, 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.

45. Under CRTA section 58.1, the Provincial Court of BC can enforce a validated copy of the CRT's order. 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 a Provincial Court of BC order.

Laylí Antinuk, Tribunal Member