



Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-005991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955127 B.C. Ltd. v. Stuart*, 2022 BCCRT 461

B E T W E E N :

0955127 B.C. LTD.

APPLICANT

A N D :

TERA LEEANN STUART and MAGDALENA APANOWICZ

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a residential tenancy.
2. The applicant, 0955127 B.C. Ltd. (095), says it rented 2 bedrooms in a 3-bedroom suite to the respondents, Tera Leeann Stuart and Magdalena Apanowicz. 095 says that Ms. Stuart's daughter later moved into the third bedroom without notice and failed

to pay rent. In the Dispute Notice, 095 sought \$3,000 for unpaid rent for the third bedroom and requested an order that both Ms. Stuart and Ms. Apanowicz “move out” of the property, which I infer means an order for them to be evicted. Ms. Stuart’s daughter is not a party to this dispute.

3. During facilitation, 095 increased its claim to \$5,000. The respondents and Ms. Stuart’s daughter undisputedly moved out in about September 2021. 095 says that the respondents damaged the residence and stole items when they moved out. I infer that 095 increased its claim to account for the alleged damage and theft.
4. The respondents say that 095 knew Ms. Stuart’s daughter was moving in to rent the third bedroom, and that Ms. Stuart paid a damage deposit to secure it. The respondents also say that all the alleged damage was already present before they moved in. In any event, the respondents say that this dispute is subject to the *Residential Tenancy Act* (RTA) and should be decided by the Residential Tenancy Branch (RTB).
5. 095 is represented by a director, Que Pham. The respondents are each self-represented.

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, each of the 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. Under section 11(1)(a)(i) of the CRTA, the CRT may refuse to resolve a claim or dispute if it would be more appropriate for another legally binding process or dispute resolution process. Section 11(1)(e) of the CRTA says the CRT may refuse to resolve a claim if it is satisfied that the claim or dispute is beyond the CRT's jurisdiction. As this dispute involves a residential tenancy, I found it necessary to address below whether the CRT has jurisdiction to hear it, or whether the RTB is a more appropriate forum. I asked the parties for further submissions on this issue, which I have considered in my analysis.
9. 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.
10. 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.
11. Ms. Apanowicz submitted all of her evidence after the CRT's deadline. All parties had an opportunity to respond to it, so given the CRT's flexible mandate, I allow and have considered the late evidence, which I find is relevant.

ISSUES

12. The issues in this dispute are:

- a. Does the CRT have jurisdiction to hear this dispute?
- b. If so, do the respondents owe 095 \$5,000 in unpaid rent, damages, and theft?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant 095 must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.

Jurisdiction

14. Having reviewed the parties’ evidence and submissions, on balance I find it is appropriate to refuse to resolve this dispute. I make this finding under section 11(1)(a)(i) of the CRTA because I find this dispute would be more appropriate for another legally binding process, namely the RTB’s dispute resolution process, and under section 11(1)(e) because I find the dispute is beyond the CRT’s jurisdiction.

15. Generally, residential tenancy disputes are within the exclusive jurisdiction of the RTB under the RTA. Section 4 of the RTA lists exceptions where the RTA does not apply. One of these exceptions is where the tenant shares bathroom or kitchen facilities with the accommodation’s owner. The RTB typically declines jurisdiction over these “roommate disputes”.

16. Ms. Apanowicz and Ms. Stuart did not know each other before they each rented rooms in the same house in about January 2021. The subject house was split into 3 units: a basement suite, a middle suite, and an upper suite. Each unit had its own kitchen, bathroom, and living room. Ms. Apanowicz and Ms. Stuart rented rooms in the furnished upper suite, which had 3 bedrooms. 095 was the respondents’ landlord.

Neither respondent signed a written tenancy agreement with 095. None of this is disputed.

17. The RTA defines a tenancy agreement as being between a landlord and tenant respecting possession of a rental unit, use of common areas and services and facilities, whether the agreement is written or oral, express or implied. Section 2 of the RTA says that the RTA applies to tenancy agreements, rental units, and other residential property. The RTA also says that a “service or facility” provided by a landlord under a tenancy agreement may include appliances and furnishings.
18. Each of the parties to this dispute provided submissions on how the RTA applies to various issues in this dispute. On the undisputed evidence before me, I find this dispute involves tenancy agreements, and furnished rental units or residential property, as set out in section 2 of the RTA. This supports a finding that this dispute falls under the exclusive jurisdiction of the RTB.
19. Section 58 of the RTA also provides for dispute resolution about landlords’ and tenants’ rights and obligations under the RTA or a tenancy agreement. Sections 65 and 67 of the RTA permit the RTB to order the payment of money by a landlord or tenant for not complying with the RTA or a tenancy agreement, such as non-payment of rent.
20. Under section 37 of the RTA, one of a tenant’s obligations when vacating a rental unit is to leave it reasonably clean and undamaged, except for reasonable wear and tear. This dispute also relates to the accommodation’s condition when the respondents vacated it, so I find section 37 is relevant to this dispute. The RTB has jurisdiction to order payments for breaches of section 37 of the RTA.
21. I also note that Ms. Apanowicz submits that 095 did not return her \$500 damage deposit when she moved out, though she did not file a counterclaim in this CRT dispute. In any event, orders for a landlord to return or retain a security deposit fall within the exclusive jurisdiction of the RTB.

22. I find all these factors further support a finding that the RTB has jurisdiction to decide this dispute. So, I find whether the CRT has jurisdiction over this dispute comes down to whether it is a “roommate dispute”, to which the RTA does not apply.
23. As noted, the RTA does not apply where a tenant is sharing bathroom or kitchen facilities with the accommodation’s owner. While Ms. Pham says that she owns the house, she provided no evidence of this. On balance, I find that 095 likely owns the house, given that 095 is undisputedly the landlord and the applicant in this dispute. However, I find nothing turns on who ultimately owns the house because, for the following reasons, I find that Ms. Pham has not established that she shared a bathroom or kitchen facilities with the respondent tenants, either in her personal capacity or as 095’s director.
24. Ms. Pham says that she had planned to move into the upper suite’s third bedroom when she sold her other house. I note that Ms. Pham does not say when she sold the other house, and she provided no evidence of this alleged sale. Ms. Pham says that she was unable to move in because first Ms. Stuart contracted COVID-19 and then Ms. Stuart’s daughter moved into the third bedroom without notice or permission.
25. The respondents deny that Ms. Pham ever planned to move into the upper suite with them. They also say Ms. Pham and her husband, JP, did not sell the house they lived in. In fact, it is undisputed that Ms. Apanowicz stayed with Ms. Pham and JP in their house for 10 days when Ms. Stuart contracted COVID-19 in February 2021. So, I do not accept Ms. Pham’s evidence that she had already sold her house and Ms. Stuart’s COVID-19 prevented her from moving into the upper suite with the respondents.
26. The respondents also each provided text message exchanges between themselves and JP, showing their agreements to rent furnished rooms in the house. JP does not mention in any of the texts that he or Ms. Pham intended to occupy the third bedroom. In fact, JP told Ms. Apanowicz that Ms. Stuart may need 2 rooms. I find this suggests that JP and Ms. Pham were aware that Ms. Stuart’s daughter would likely be moving in at some point and did not object. Ms. Stuart also provided a July 31, 2021 text message from Ms. Pham, stating that because Ms. Stuart had not confirmed when

her daughter was moving in, Ms. Pham had rented the third bedroom to another tenant. Ms. Pham provided no evidence that she told the respondents she planned to move in herself.

27. Overall, I find there is insufficient evidence that Ms. Pham sold her house or planned to move into the upper suite with the respondents, as alleged. In any event, even if Ms. Pham had intended to move in, I find that she never did so. Therefore, I find that she did not share bathroom or kitchen facilities with the respondents. On balance, I find this is not a roommate dispute over which the CRT has jurisdiction, and I find the RTA applies.
28. I note that Ms. Pham submits the “residential tenancy office” told her it would not get involved because the tenants only rented rooms and not the whole unit. I place little weight on this submission because Ms. Pham did not provide the role or position of the person who allegedly gave her this advice.
29. Perhaps more importantly, it is unclear what information the person had in providing this alleged advice. I find that this is not a dispute between tenants, but a dispute brought by a landlord against its tenants. So, I find it is likely irrelevant whether the respondents had rented the entire suite or there was another rentable room in the suite. Further, on balance, I find the respondents had rented the entire suite because the evidence shows Ms. Stuart paid a further damage deposit to Ms. Pham on July 27, 2021 for her daughter to occupy the third bedroom.
30. In any event, it is undisputed that 095 has not applied for RTB dispute resolution, so I find the alleged advice was not a RTB refusal to hear the dispute. Given the significant evidence that this dispute falls under the RTB’s exclusive jurisdiction, I find it unlikely that the person’s reported advice to Ms. Pham was a considered a decision by the RTB to decline jurisdiction in this matter.
31. Overall, I find that the substance of this matter involves a residential tenancy and the respondents’ obligations under the RTA and the unwritten tenancy agreement. On

the evidence before me, I find the dispute is more appropriate for the RTB and falls under its jurisdiction.

32. For these reasons, I refuse to resolve this dispute pursuant to sections 11(1)(a)(i) and 11(1)(e) of the CRTA. However, if the RTB later determines it does not have jurisdiction over 095's dispute, it may reapply to the CRT with the written particulars of the RTB's decision.

33. I note that CRT staff raised this potential jurisdiction issue with the parties during the intake phase, but 095 chose to proceed to the decision phase. In the circumstances, I decline to direct the CRT to refund 095's paid CRT fees.

ORDER

34. I refuse to resolve this dispute under sections 11(1)(a)(i) and 11(1)(e) of the CRTA.

Kristin Gardner, Tribunal Member