



Civil Resolution Tribunal

Date Issued: May 13, 2022

File: SC-2021-007630

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Harrison v. Boser*, 2022 BCCRT 570

B E T W E E N :

ANGELA HARRISON

APPLICANT

A N D :

BRADLEY DALE BOSER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute about shared accommodation.
2. The applicant, Angela Harrison, says that she had been in a romantic relationship with the respondent, Bradley Dale Boser, until June 2021. She says they remained friends and then decided to live together as “roommates” in Mr. Boser’s rented

apartment as of October 1, 2021. She says after she moved in, Mr. Boser made it clear he wanted a romantic relationship with her and this was not her intention. She alleges that Mr. Boser evicted her and allowed her no access to her belongings. She seeks reimbursement of \$675 for October's rent and half the gas bill payment (utilities) and \$500 for "stress and duress for being made homeless in a housing crisis". She also seeks \$1,978.00 in "out-of-pocket" expenses for hotels, food, gas, flights to visit her daughter, clothing, toiletries, and moving fees.

3. Mr. Boser says the parties were in a romantic relationship when they agreed to live together but Ms. Harrison later decided to be with another man. He says in late September they had a disagreement about Ms. Harrison's "boyfriend" staying over and he could not then carry through with their plans to live together. He says he refunded the \$675 and owes Ms. Harrison nothing in expenses. He says he is the one who suffered "stress and duress" from the situation. Mr. Boser did not file a counterclaim.
4. The parties are each 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. 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. Here, I find that I am

properly able to assess and weigh the documentary evidence and submissions before me. Further, 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

Preliminary Issues

Residential Tenancy Branch (RTB)

9. The CRT does not have jurisdiction over residential tenancy disputes. Such disputes are within the jurisdiction of the director of the RTB under the *Residential Tenancy Act* (RTA). However, the RTB refuses jurisdiction over "roommate disputes", such as this one. So, I find the RTA likely does not apply to this tenancy. Instead, I find this dispute falls within the CRT's small claims jurisdiction, as set out in CRTA section 118.

Personal Loan

10. In argument, Ms. Harrison alleges Mr. Boser owes her a debt from personal loans. I find the loan issue is not directly before me because Ms. Harrison did not mention outstanding loans nor request repayment of the loans in her application for dispute resolution. Ms. Harrison also amended the Dispute Notice and did not include a claim for the personal loans in the amended Dispute Notice either. Since Ms. Harrison did

not file a claim for repayment of loans, I have not discussed her evidence over the alleged loans or resolved the loan issue.

ISSUES

11. The issues in this dispute are:

- a. Did Mr. Boser breach the parties' tenancy agreement?
- b. Did Mr. Boser withhold Ms. Harrison's belongings?
- c. To what extent, if any, is Ms. Harrison entitled to \$675 for rent and utilities, \$500 as compensation for stress and duress, and \$1,978 for out-of-pocket expenses?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Ms. Harrison must prove her claims on a balance of probabilities (which means "more likely than not"). I have read all the parties' arguments and evidence but refer only to what I find relevant to provide context for my decision.

13. In August 2021, the parties agreed that Ms. Harrison would move into Mr. Boser's rented apartment. The parties did not have a written tenancy agreement. Based on their August 2021 texts, I find the parties intended Ms. Harrison would move into Mr. Boser's apartment after his roommate moved out at the end of September 2021. Ms. Harrison agreed to pay Mr. Boser \$675 per month for rent and utilities. She paid Mr. Boser the \$675 on September 29 as set out in the e-transfer receipt.

14. It is undisputed that the parties had been in a romantic relationship. Ms. Harrison says they broke up in June 2021 and she was "under the impression" that they were merely "friends" and they would live together as "roommates". However, Ms. Harrison says once she moved into Mr. Boser's apartment he wanted to be in a relationship with her. She says she felt he was trying to "coerce" her into a sexual relationship and

because she did not want this from him, he evicted her and she ended up “homeless”. I note the parties’ texts indicate that after Ms. Harrison moved out she stayed with her boyfriend, then her daughter, and then a friend and was not actually left without any housing.

15. Mr. Boser says the parties were still seeing each other regularly and were excited to live together. He says he only learned in mid-September that Ms. Harrison was seeing another man. He says after Ms. Harrison insisted this man would sleep with her in his rented apartment, he knew he could not continue with their plans. He says because of this other relationship that their agreement to live together ended. I infer Mr. Boser means he ended it, but as I discuss next, I find their agreement was void due to mutual mistake in any event.
16. I turn to whether the parties had a mistaken understanding of their decision to live together. In contract law, there can be 3 types of mistakes that impact the presence or absence of an agreement: common, mutual, and unilateral. Common is where the parties make the same mistake. Mutual mistake occurs when both parties are mistaken, but their mistakes are different, which is what I find happened here. Unilateral mistake is where only one of the parties is operating under a mistake. In other words, if the other party is not aware of the one party’s erroneous belief, then the case is a mutual mistake. If the other party knows of it, it is a unilateral mistake. In the case of a mutual or unilateral mistake, the very existence of the agreement is rejected or void: see discussion in *Hannigan v. Hannigan*, 2007 BCCA 365 at paragraph 63.
17. On my assessment of the parties’ statements and the submitted evidence, I find they were more likely than not operating on different assumptions about their agreement to live together. From Ms. Harrison’s perspective she was moving into Mr. Boser’s apartment as his “roommate” and from Mr. Boser’s perspective she was moving in so they could live together in a romantic relationship. So, I find they were mutually mistaken or not on the same page about the nature of their living arrangement

18. As I find mutual mistake, I find their agreement to live together was void and there was no valid tenancy contract as a result. Based on the submitted payment records, I find Mr. Boser already returned Ms. Harrison's October payment for rent and utilities, plus \$1 extra and there is nothing else owing. In the absence of a contract, Mr. Boser had no obligation to give Ms. Harrison reasonable notice and so Mr. Boser is not liable to Ms. Harrison for the claimed breach of contract damages or out-of-pocket expenses.
19. I turn next to Ms. Harrison's specific allegation that Mr. Boser would not allow her to return to the apartment for her belongings. She says she had to buy replacement clothes and toiletries as a result and claims the expenses she incurred for these items.
20. Although she does not use this term, Ms. Harrison is essentially arguing Mr. Boser is liable under the tort of detinue. The legal term "detinue" means the continuous wrongful detention of personal property (*Li v. Li*, 2017 BCSC 1312 at 224).
21. On October 4, 2021, Mr. Boser texted Ms. Harrison that his landlord required someone to supervise her to collect her belongings and it would be trespass if she came alone to the apartment because she was not a "tenant". Mr. Boser told Ms. Harrison in the text they would work out an arrangement for her to pick up her belongings and "move on". Based on the parties' subsequent texts, I find Ms. Harrison and Mr. Boser came to an agreement that he would store her belongings until she moved into a permanent place mid-November. So, I find they mutually agreed Mr. Boser would be a "bailee", which is a person responsible for storing her belongings.
22. It is undisputed that Ms. Harrison collected her belongings when she moved into her new place and there is no evidence she had any issue with Mr. Harrison keeping them from her. Instead, the texts indicate that Mr. Boser would have preferred Ms. Harrison to have retrieved her belongings earlier. So, I find Mr. Boser did not wrongfully detain her belongings. As there is no suggestion Mr. Boser damaged any of Ms. Harrison's belongings, I find Mr. Boser is not responsible to reimburse Ms. Harrison for her new clothes or toiletries.

23. Next, Ms. Harrison alleges Mr. Boser “sexually and verbally harassed” her. Even if I accept Mr. Boser harassed her, which is not proven on the evidence, there is no recognized cause of action in British Columbia for the tort of harassment: see *Total Credit Recovery v. Roach*, 2007 BCSC 530. This means Ms. Harrison has no legal right to claim damages on the basis that Mr. Boser allegedly harassed her.
24. For the reasons above, I conclude that Ms. Harrison has not proven her claims for damages or out-of-pocket expenses. Since Mr. Boser already refunded the \$675, I find he does not owe her anything more and I dismiss Ms. Harrison’s claims.
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 see no reason in this case not to follow that general rule. As the unsuccessful party, I find Ms. Harrison is not entitled to reimbursement of CRT fees or dispute-related expenses. Mr. Boser did not pay any CRT fees nor claim any expenses.

ORDER

26. I dismiss Ms. Harrison’s claims and this dispute.

Trisha Apland, Tribunal Member