



# Civil Resolution Tribunal

Date Issued: June 8, 2022

File: SC-2021-006338

Type: Small Claims

Civil Resolution Tribunal

Indexed as *Bertram v. Graumann*, 2022 BCCRT 674

BETWEEN:

ANDRE BERTRAM

**APPLICANT**

AND:

BARB GRAUMANN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about a security deposit between prospective roommates. The applicant, Andre Bertram, claims reimbursement of the \$250 deposit he paid the respondent, Barb Graumann, to rent a room in their home. The applicant canceled the rental agreement before he moved in and the respondent has not refunded the deposit.

2. The respondent says the applicant is not entitled to a deposit refund because they agreed that the deposit would only be refunded if the respondent found a new roommate before the end of August 2021. The respondent says that they were unable to find another roommate.
3. Both parties in this dispute are 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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

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.
8. Under the *Residential Tenancy Act* (RTA), the Residential Tenancy Board (RTB) has jurisdiction to decide disputes involving rights and obligations under the RTA or under a residential tenancy agreement about a tenant's occupation of a rental unit, among other things. However, RTA section 4(e) excludes from the RTB's jurisdiction living accommodations in which a tenant shares bathroom or kitchen facilities with the owner of that accommodation. Both parties were given an opportunity to provide submissions about whether this dispute is within the CRT's jurisdiction, which I reviewed and considered. Both parties submitted that the applicant would have shared the bathroom and kitchen with the respondent under the rental agreement. Further, both parties say that the RTB has not accepted jurisdiction over this dispute. So, I find that the RTA does not apply to this room rental, and that the CRT is the appropriate forum for this dispute.
9. The respondent provided submissions about alleged settlement negotiations. However, generally settlement negotiations are not considered as evidence (see *B.C. Children's Hospital v. Air Products Canada Ltd.*, 2003 BCCA 177) So, I did not consider the submissions about alleged settlement negotiations in my decision.

## **ISSUE**

10. The issue in this dispute is whether the applicant is entitled to a refund of his \$250 deposit.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities, meaning "more likely than not." The respondent did not provide any evidence, though they had the opportunity to do so. I have read all the parties'

submissions and evidence but refer only to what I find relevant to provide context for my decision.

12. The following facts are not disputed:

- a. The applicant agreed on August 1, 2021 to rent a room from the respondent, starting September 1, 2021.
- b. The parties did not have a written rental agreement.
- c. The applicant paid the respondent a \$250 deposit on August 1, 2021.
- d. On August 2, 2021, the applicant sent the respondent a text message cancelling the room rental agreement and requesting the return of the \$250 deposit. The applicant had not moved into the room or paid any rent before he cancelled the rental agreement.
- e. The respondent has not returned the \$250 deposit.

13. The respondent says that, when the applicant cancelled the rental agreement, they both agreed that the respondent would try to rent the room to another roommate. Further, the respondent says that if they were able to find another roommate before the end of August 2021, then the respondent would refund the deposit, less the \$30 classified advertisement reposting fee. The respondent says that they were unable to find another roommate. The respondent did not provide any supporting evidence showing that the applicant agreed to this.

14. In contrast, the applicant denies this alleged agreement. Rather, the applicant says that he demanded an immediate, full deposit refund. I find that this is supported by the applicant's August 3, 2021 text message to the respondent demanding a full deposit refund by August 4, 2021. Further, the applicant's lawyer sent the respondent an August 6, 2021 letter demanding a full deposit refund. Based on the applicant's August 3, 2021 text message and his lawyer's letter, I find that the applicant did not agree to wait until the end of August 2021 for a deposit refund if another roommate

was found as the respondent alleges. So, the issue of whether the applicant is entitled to a deposit refund depends on the parties' original rental agreement.

15. The respondent says the deposit is a security deposit, which the applicant does not dispute. Since the applicant delivered the deposit one month before the room rental was scheduled to start on September 1, 2021, I find both parties intended to be bound by the deposit to secure the room rental. So, when the applicant withdrew, he breached the parties' contract. This does not mean, however, that the respondent is entitled to keep the deposit.
16. The respondent did not file a counterclaim for losses they suffered because of the applicant's breach of contract. However, the respondent did argue that they are entitled to keep the deposit because they were unable to find another roommate. So, I will consider to what extent, if any, the respondent suffered losses that can be set off against the deposit.
17. I find that the respondent is only entitled to keep any portion of the applicant's deposit necessary to offset the damages suffered from his breach of contract. The respondent has the burden of proving that they suffered any such loss or damage.
18. The respondent says that they attempted to rent the room to another roommate. The respondent says they paid \$30 to repost the classified fee. The applicant provided a copy of the respondent's reposted August 3, 2021 rental advertisement. However, the applicant says that the classified service does not charge a fee to relist advertisements. Without providing a receipt showing payment of a relisting fee, I find both parties submissions to be equally likely and find that the respondent has not proved that they paid \$30 to relist the advertisement.
19. The respondent says that the applicant agreed to rent the room for 9 months and it was hard to find an appropriate roommate willing to stay for that period of time. However, the respondent did not provide any supporting evidence showing the efforts they made to find a new roommate, other than the classified advertisement reposted on August 3, 2021.

20. The applicant says the respondent removed the advertisement on August 5, 2021. The applicant provided a printout of the classified's rental results for August 5, 2021 which does not display the respondent's roommate listing. The applicant texted the respondent on August 5, 2021 asking if they found a new roommate because the listing was gone. The respondent wrote back saying that the advertisement may have expired. However, the applicant provided a printout from the classified service's website which shows that this classified service displays advertisements for 30 days before they expire. Further, the applicant says that he also checked the classified listing service on August 9, 2021, September 7, 2021 and October 28, 2021 and he says that the respondent's roommate listing was not displayed on any of those dates, which the respondent did not dispute.
21. The respondent did not explain the duration of time that they advertised the room vacancy or explain why the applicant was unable to view the listing after August 5, 2021. Based on the classified site's information printout showing that listings are displayed for 30 days, I find that the respondent's August 3, 2021 rental listing likely did not expire by August 5, 2021 as the respondent suggested. Rather, based on the absence of advertisement listings since August 5, 2021, and the lack of evidence or submissions showing that the respondent posted their room vacancy listing elsewhere, I find that the respondent voluntarily stopped posting their advertisement on August 5, 2021. Without an explanation, I find that the respondent likely did so because they had found a new roommate by then, or the respondent had decided that they no longer wanted to rent the room out. Either way, I find that the respondent has not proved that they suffered any damages or incurred any expenses from the applicant's cancellation of the rental agreement. So, I find that the applicant is entitled to a full refund of the \$250 deposit.

### ***CRT fees, expenses and interest***

22. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgment interest on the \$250 deposit refund from August 5, 2021, the date that

the respondent stopped displaying their roommate listing advertisement, to the date of this decision. This equals \$0.95.

23. 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. Since the applicant was successful, I find that he is entitled to reimbursement of his CRT fees. This is \$125. Neither party claimed reimbursement of dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$375.95, broken down as follows:
- a. \$250 as a deposit refund,
  - b. \$0.95 in pre-judgment COIA interest, and
  - c. \$125 in CRT fees expenses.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.

27. 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.

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Richard McAndrew, Tribunal Member