



# Civil Resolution Tribunal

Date Issued: July 11, 2022

File: SC-2021-008149

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kushala Yoga Ltd. v. Onni Ioco Road Six Development Limited Partnership, 2022 BCCRT 794*

B E T W E E N :

KUSHALA YOGA LTD.

**APPLICANT**

A N D :

ONNI IOCO ROAD SIX DEVELOPMENT LIMITED PARTNERSHIP and  
FAISAL ARIF

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about the return of a security deposit. The applicant, Kushala Yoga Ltd. (Kushala), leased commercial premises from the respondent, Onni Ioco Road Six Development Limited Partnership (Onni). The respondent, Faisal Arif, is Onni's

commercial property manager. Kushala says when the lease ended, the respondents withheld part of Kushala's security deposit for alleged damage to the premises. Kushala says it is not responsible for the alleged damage and Onni never repaired it. Kushala claims \$2,173.50 for the unreturned deposit amount.

2. The respondents say Kushala was responsible for the alleged damage under the lease, so Onni was entitled to retain \$2,173.50 and owes nothing more.
3. In this dispute, Kushala is represented by its owner, Chris Dunphy. Mr. Arif represents both himself and Onni.

## **JURISDICTION AND PROCEDURE**

4. These are the formal 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. 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. 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 in the interests of justice.
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.

## **ISSUE**

8. The issue in this dispute is whether Kushala left the leased premises in good repair before moving out, and if so, whether the respondents must refund the remaining \$2,173.50 security deposit amount.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Kushala must prove its claim on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. At the outset, I note that it is unclear why Mr. Arif is named as a respondent in this CRT dispute. Kushala does not allege that Mr. Arif is a party to the lease agreement. It also does not allege that Mr. Arif was acting in his personal capacity, and not as Onni’s employee and agent, in withholding part of the security deposit. On the evidence before me, I find Mr. Arif is not personally responsible for the withheld security deposit amount, and I dismiss Kushala’s claims against him.
11. I turn now to Kushala’s claim against Onni. The parties agree that Kushala’s 10-year lease ended on August 31, 2021. None of the parties submitted the entire lease agreement as evidence, although Mr. Arif selected and submitted certain lease pages that he says are relevant. From context and the parties’ submissions, I find that Kushala was the “Tenant” under the lease agreement, and Onni was the “Landlord”.
12. Under section 6.1 of the lease, Kushala was responsible for maintaining, repairing, and redecorating the leased premises, except for reasonable wear and tear. Section 6.5 said that Kushala was responsible for repairing damage to the premises caused

by Kushala or its guests. Onni could elect to repair such damage and recover the costs from Kushala. Section 12.5 said Kushala would leave the premises in good order and repair when it vacated, subject to section 6.3, which is not in evidence. Section 2.3 said if Kushala failed to perform an obligation under the lease, Onni could apply Kushala's security deposit as compensation to Onni for "any loss or expense incurred" by Onni.

13. Onni says, essentially, that Kushala breached sections 6.1, 6.5, and 12.5 of the lease because it damaged and did not repair floorboards and baseboards, which were not left in good order. Kushala disagrees.
14. A submitted commercial premises condition report shows that the parties jointly inspected the premises on July 27, 2021, and again on September 1, 2021, the day after the lease ended. No flooring shortcomings were identified on the earlier date, although it was noted that Kushala would "remove cabinets and decorations." On the later date the report identified flooring deficiencies, namely, "missing pieces of planks" and "wear & tear, missing laminate flooring pieces, missing" (reproduced as written).
15. I find photos in evidence showed areas near walls with gaps in floor planks and baseboards. The gaps appeared to be squarely cut. Based on the photos and the parties' submissions, I find these gaps were located behind, underneath, or around Kushala's cabinets and other items that it removed between the first and second move-out inspections. Onni says the gaps were obscured by those items, but does not provide any supporting evidence. Based on the photos, I find the gaps' edges were likely visible even without moving any of the cabinets or other items. I find Onni could have identified the flooring and baseboard gaps with a reasonably diligent first inspection, but it did not.
16. I find photos also show areas where the finish on the floor's wooden planks appeared to be worn. Onni does not say that its view of those worn areas was obscured during the first inspection. It does not explain why it noted wear and tear during the second inspection but not the first inspection.

17. I find the condition report's first inspection comments show that Onni and Kushala agreed Kushala would remove its cabinets after the first inspection. None of the parties say who initially installed the flooring or baseboards, although given that they were installed around Kushala's items, I find it was likely Kushala. There is no move-in condition report or other evidence that shows the condition of the premises either when Kushala took possession of them or when the flooring and baseboards were installed.
18. Having weighed the evidence, I find that the missing floorboards and baseboards were not "damage" under the lease, but were areas left free of those materials to accommodate Kushala's cabinets and other items. Onni does not say that these areas were damaged or in poor repair while the cabinets and similar items remained in place on July 27, 2021, although as noted those alleged shortcomings were reasonably discoverable at that time. Onni only identified those areas as damaged after Kushala removed its cabinets and other items, as Onni requested and approved.
19. So, I find Kushala did not fail to keep the premises in good order and repair simply because it left the flooring and baseboards in the same state they had been in for an unspecified time period, and which Onni did not previously say was inadequate. Overall, I find the lease does not make Kushala responsible for closing the floorboard and baseboard gaps.
20. Turning to the areas of worn flooring, I note that lease section 6.1 indicates that Kushala is not responsible for repairing reasonable wear and tear to the premises. I find the flooring wear and tear shown in the photos appears to be reasonable, and there is no evidence that it is not. So, I find the flooring wear is not damage or poor repair that Kushala was responsible for under the lease.
21. For the above reasons, I find the evidence shows that Kushala did not break the parties' lease by failing to close the gaps and refinish worn areas. Further, even if Kushala had been responsible under the lease for improving or repairing those items, I find Onni has not proven it suffered any damages, for the following reasons.

22. Onni submitted an October 4, 2021 invoice from Onni Contracting Ltd. for \$2,173.50 for replacing damaged laminate flooring and missing baseboards, which included an unexplained \$270 “Admin Fee”. Onni does not comment on any relationship between it and Onni Contracting Ltd. Kushala says that none of the alleged repairs were actually performed, and that Onni instead demolished the interior of the premises. I find this submission is supported by photos in evidence.
23. Kushala’s October 5, 2021 photos showed that significant floorboard and baseboard gaps remained. October 13, 2021 photos showed the gutted interior of the premises, with no remaining interior walls or baseboards. The photos showed large piles of construction debris lay on the floor, which was covered with plastic and matting. I find much of the debris was laminated wooden planks, which appeared to be discarded flooring material. Kushala says that Onni later said it withheld the security deposit funds for demolition costs, not repairs. Onni does not comment on this allegation. I find there is no evidence that the lease required Kushala to pay for demolition costs.
24. Onni says it remedied the premises, but it does not comment on the photos of unrepaired flooring and baseboards after the Onni Contracting Ltd. invoice date, or whether it actually paid the invoice. Onni also does not comment on the apparent destruction of the premises’ interior 9 or fewer days after the invoice date, or why it would have repaired the floors and baseboards only to destroy them. So, I draw an adverse inference against Onni. I find it likely that the invoiced repairs were not completed, and that Onni chose instead to demolish the flooring and baseboards. As a result, I find Onni suffered no proven damages from unrepaired flooring or baseboards.
25. For the above reasons, I find Onni was not entitled to retain any part of the security deposit for flooring and baseboard repairs. I allow Kushala’s claim for \$2,173.50.

### ***CRT Fees, Expenses, and Interest***

26. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, Kushala is entitled to pre-judgment interest on the \$2,173.50 owing. Section 2.3 of the lease says the security deposit repayment was due 30 days after the lease's August 31, 2021 expiry. So, I find interest is calculated from September 30, 2021 until the date of this decision. This equals \$8.46.
27. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, I see no reason not to follow that general rule. Kushala was successful in its claim against Onni, so I find Onni must reimburse the \$125 Kushala paid in CRT fees. Mr. Arif paid no CRT fees, and no party claimed CRT dispute-related expenses.

### **ORDERS**

28. I order that, within 30 days of the date of this decision, Onni pay Kushala a total of \$2,306.96, broken down as follows:
- a. \$2,173.50 in debt,
  - b. \$8.46 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in CRT fees.
29. Kushala is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. I dismiss Kushala's remaining claims.

31. 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. 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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Chad McCarthy, Tribunal Member