



# Civil Resolution Tribunal

Date Issued: August 11, 2022

File: SC-2022-000025

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Smith v. Elise*, 2022 BCCRT 903

BETWEEN:

LACEY SMITH

**APPLICANT**

AND:

VICTORIA ELISE

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a commercial lease agreement. The respondent, Victoria Elise, leased a treatment room in her salon to the applicant, Lacey Smith.

2. Lacey Smith says Ms. Elise changed the locks and evicted her from her treatment room without notice. Lacey Smith claims a total of \$4,574.80 for paid rent, income loss and legal fees.
3. Ms. Elise does not dispute that she changed the locks, and asked Lacey Smith to leave the salon and remove her equipment immediately. However, Ms. Elise says she was entitled to do so because Lacey Smith illegally installed a hidden camera in her treatment room. She denies any responsibility for Lacey Smith's claims.
4. Lacey Smith did not indicate her preferred title. I will therefore refer to Lacey Smith by her full name throughout this decision.
5. The parties 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, both parties in 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. 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.

8. 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.
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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Was Ms. Elise entitled to terminate the parties' lease agreement without notice?
  - b. What is the appropriate remedy, if any?

## **EVIDENCE AND ANALYSIS**

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

13. The parties agree to the following facts. Lacey Smith leased a commercial space from Ms. Elise. The parties did not have a written agreement, but verbally agreed that Lacey Smith would pay Victoria Elise \$325 per month to lease one room in Ms. Elise's salon. On November 27, 2021, the parties agreed to end the lease on December 31, 2021. Lacey Smith paid Ms. Elise \$325 for December 2021 rent.
14. Lacey Smith says Ms. Elise changed the locks on December 2, 2021. She says she was unable to access her treatment room after that time. Lacey Smith says she retrieved her equipment and belongings on December 7, 2021.

***Was Ms. Elise entitled to terminate the parties' lease agreement?***

15. As noted, Ms. Elise does not dispute that she changed the locks on December 2, 2021, and ended the parties' lease agreement without notice.
16. Ms. Elise says it was necessary because Lacey Smith illegally installed a hidden camera in a private treatment room and refused to remove it. I find Ms. Elise argues that Lacey Smith breached the parties' agreement by installing the hidden camera, and Ms. Elise was entitled to terminate the parties' agreement on that basis.
17. Ms. Elise also says that she did not change the locks until after Lacey Smith collected her equipment and belongings. I find this submission is contradicted by a December 2, 2021 email from Ms. Elise to Lacey Smith's lawyer. In the email, Ms. Elise said that she changed the locks and security codes to the building because Lacey Smith refused to remove her hidden camera. She said that if Lacey Smith entered the building without notice, Ms. Elise would call the police. She also said Lacey Smith could contact her to set up a time to remove her belongings from the room but would not be allowed unaccompanied from this moment forward. Based on this email, I find Ms. Elise changed the locks and restricted Lacey Smith's access to her commercial space on December 2, 2021, and before Lacey Smith was able to obtain her equipment and belongings.

18. Unless an agreement is terminated, parties must fulfill their obligations. See *Kuo v. Kuo*, 2017 BCCA 245. Termination by repudiation occurs when a party shows an intention not to be bound by the agreement and the other party accepts this repudiation.
19. As noted, the parties did not have a written agreement. Neither party made submissions about any other terms in their oral lease agreement, apart from the agreed \$325 monthly rent for the treatment room, on a month to month basis.
20. I find the parties' agreement did not contain an express term that Lacey Smith would not install a camera in her treatment room. However, I find it was an implied term of the parties' agreement that Lacey Smith would not use her treatment room in an illegal way.
21. Ms. Elise says that Lacey Smith had her hidden camera on while clients were in her treatment room and recorded medical procedures, which is illegal. Lacey Smith disputes this. She says the camera was highly visible. I agree. I find documentary evidence shows the camera was placed in a visible location on top of a cabinet in Lacey Smith's treatment room. Lacey Smith says the camera was not used when she had clients in her room or during any medical procedures. She says it was installed for security because some items were going missing from her room. She says the camera only recorded when there was movement or entry into her room when she was not in the salon.
22. I acknowledge that Ms. Elise had concerns with Lacey Smith installing a camera in her treatment room. However, I find the evidence and submissions before me do not show that doing so was illegal, or otherwise prohibited under the parties' lease agreement. There is also no documentary evidence or statements that support Ms. Elise's allegation that the camera was used to record medical procedures.
23. On balance, I find Lacey Smith did not breach or repudiate the parties' agreement by installing a video camera in her treatment room. Therefore, I also find Ms. Elise was not entitled to terminate the parties' lease agreement on that basis.

24. I find the parties' agreement also included an implied term that if either party wanted to end the lease agreement, reasonable notice was required. The evidence shows that on November 27, 2021, Ms. Elise gave Lacey Smith written notice that she wanted to terminate the lease agreement effective December 31, 2021. The parties mutually agreed to end the lease agreement on December 31, 2021.
25. Despite this, Ms. Elise showed a clear intention not to be bound by the parties' agreement when she changed the locks on December 2, 2021 and told Lacey Smith to collect her equipment and leave immediately. I have already found Ms. Elise was not entitled to do so under the parties' agreement. I find Ms. Elise restricted Lacey Smith's access to her treatment room during the lease's term without reasonable notice, in breach of the parties' agreement. I find this amounts to Ms. Elise repudiating the parties' agreement. I find that Lacey Smith accepted Ms. Elise's repudiation when she collected her equipment and belongings from her treatment room on December 7, 2021.

***What is the appropriate remedy?***

26. I have found Ms. Elise repudiated the parties' agreement. Lacey Smith's remedy for Ms. Elise's breach and repudiation of the contract is damages. Damages for breach of contract are intended to place an innocent party in the position they would have been in if the contract had been carried out as agreed. See *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.
27. In Lacey Smith's application for dispute resolution, she claimed \$4,574.80 for paid rent, income loss, and legal fees. She also said she was seeking double damages and costs under the *Rent Distress Act*. In her submissions, Lacey Smith only claims a total of \$3,324.80 for paid rent, income loss and legal fees. She did not explain the discrepancy.
28. I find the *Rent Distress Act* does not apply to this dispute. I say this because it is undisputed that Lacey Smith paid rent, and the evidence does not show that Ms. Elise distrained (which means seizing property to obtain payment of rent) or sold any of

Lacey Smith's belongings for rent due under the *Rent Distress Act*. Further, Lacey Smith says she collected her equipment and belongings from her treatment room at Ms. Elise's salon on December 7, 2021 in any event.

29. I will now address Lacey Smith's claimed damages, based on the \$3,324.80 revised amount claimed in her submissions.

*Paid rent*

30. Lacey Smith claims \$325 for the December 2021 rent she undisputedly paid Ms. Elise. In the parties' agreed statement of facts, Lacey Smith said that Ms. Elise refused to provide a refund. Ms. Elise disputed this. However, Ms. Elise did not say that she refunded Lacey Smith her paid December 2021 rent or provide any documentary evidence to show that she did so. Therefore, I find it likely that Ms. Elise has not refunded Lacey Smith for her paid December 2021 rent. Ms. Elise also did not file a counterclaim or argue that she is entitled to keep Lacey Smith's paid rent. Ms. Elise prevented Lacey Smith from accessing her treatment room after December 2, 2021. Therefore, I find Lacey Smith is entitled to \$325 in damages for her paid December 2021 rent.

*Lost income*

31. Lacey Smith also claims \$1,100 for income loss in December 2021.
32. Lacey Smith must prove her income loss. She says in the 6 months before December 2021 her gross sales averaged \$1,176.66 per month. Lacey Smith says she leased a new room at the beginning of January 2022 in a new location and opened for business on February 1, 2022. She says after she opened in her new location in February 2022, her next 3 months gross sales averaged \$1,462.67 per month. Documentary evidence supports these amounts. Based on these figures, she says she estimated her income loss in December 2021 at \$1,100. However, Lacey Smith did not provide details on how many clients she had booked in December 2021, or how many cancellations resulted after she was locked out of her treatment room. She also did not provide details of her net income.

33. I also note that Lacey Smith had a duty to mitigate her losses. This means she had to act reasonably to prevent avoidable losses resulting from Ms. Elise's breach of contract. Ms. Elise did not argue that Lacey Smith failed to mitigate her losses. Rather, she argues that Lacey Smith's business was mobile and so she did not suffer any income loss at all. I do not accept that Lacey Smith's business was fully mobile such that she would not have suffered any income loss after Ms. Elise evicted her without notice. I say this because it is inconsistent with Lacey Smith leasing a room in Ms. Elise's salon in the first place. I find the evidence does not show that Lacey Smith failed to mitigate her losses.
34. Given all the above, I find it likely that Lacey Smith did suffer some income loss as a result of Ms. Elise restricting access to her commercial space without notice. However, I find she has not proven \$1,100 in losses. On a judgment basis, I find that \$400 in damages for loss of income is reasonable and appropriate in the circumstances.

### Legal Fees

35. Lacey Smith also claims \$1,724.80 in legal fees as part of her damages claim. She did not submit an invoice or other documentary evidence in support of this claim. Although she refers to these claimed legal fees as dispute-related legal fees in her submissions, they were included as part of her primary claim in her application for dispute resolution. Further, her submissions and the evidence suggest that the legal fees were incurred before the CRT dispute started. So, it is not clear that they are dispute-related expenses. Legal fees are generally only recoverable in the context of "costs" or dispute-related expenses, not as damages: see *Voyer v. C.I.B.C.*, 1986 CanLII 1226 (BC SC). In any event, CRT rule 9.5(3) says the CRT will not order reimbursement of a lawyer's fees for small claims disputes unless there are extraordinary circumstances, which I find are not present here. So, I dismiss this claim.



### Summary

36. In summary, I find Lacey Smith is entitled to \$325 for her paid December 2021 rent and \$400 for her lost income. In total, I find Ms. Elise must pay Lacey Smith \$750 in damages.

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

37. The *Court Order Interest Act* applies to the CRT. Lacey Smith is entitled to pre-judgment interest on the \$750 from December 2, 2021, the date Ms. Elise changed the locks, which I find is reasonable in the circumstances, to the date of this decision. This equals \$3.42.

38. 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. Lacey Smith was only partially successful in this dispute, so I find she is entitled to reimbursement of \$87.50 for half of her paid CRT fees. I have already dismissed Lacey Smith's claim for legal fees above as part of her damages claim. She did not claim any further dispute-related expenses, so I award none.

### **ORDERS**

39. Within 30 days of the date of this order, I order Ms. Elise to pay Lacey Smith a total of \$840.92, broken down as follows:

- a. \$750 in damages,
- b. \$3.42 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

40. Lacey Smith is entitled to post-judgment interest, as applicable.

41. 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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Leah Volkers, Tribunal Member