



# Civil Resolution Tribunal

Date Issued: September 9, 2022

File: SC-2022-000091

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bourgon v. Lauzon*, 2022 BCCRT 1006

B E T W E E N :

ARIANE BOURGON

**APPLICANT**

A N D :

KRYSTAL LAUZON and JODI REAUME

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. The applicant, Ariane Bourgon, and the respondent, Krystal Lauzon, were former roommates. Ms. Bourgon says Ms. Lauzon moved out early and agreed to indemnify her for costs paid to the landlord for ending the lease early. Ms. Bourgon claims reimbursement for the following: \$2,175 for liquidated damages, \$100 for December 2021's parking stall rent, and \$84 for a cleaning fee. Ms. Bourgon also says Ms.

Lauzon breached an agreement to pay her \$80.83 for use of the larger bedroom for 1 month, and \$288.13 for Ms. Lauzon's share of utility bills.

2. Ms. Bourgon did not say why the respondent Jodi Reaume was liable for the claimed amounts. I note Ms. Reaume was a guarantor for Ms. Lauzon under the lease agreement with the landlord.
3. The respondents deny liability. As discussed below, they say they owe nothing.
4. Ms. Bourgon represents herself. Ms. Reaume represents both respondents. I note that Ms. Lauzon did not submit a Dispute Response. However, I find she essentially participated through Ms. Reaume. So, I find she is not in default.
5. For the reasons that follow, I find Ms. Bourgon has proven most of her claims against Ms. Lauzon. I dismiss her claims against Ms. Reaume.

## **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. Some of the evidence in this dispute amounts to a "she said, she 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.

8. 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.
9. 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.
10. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes like this one. So, I find the RTA does not apply and this is a contractual roommate dispute within the CRT's small claims jurisdiction.

## **ISSUES**

11. The issues in this dispute are as follows:
  - a. Did Ms. Lauzon agree to reimburse or indemnify Ms. Bourgon the claimed amounts?
  - b. What are the appropriate remedies, if any?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, the applicant Ms. Bourgon must prove her claims on a balance of probabilities. This means more likely than not. I have read all the

parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

13. I begin with the largely undisputed background. Ms. Bourgon and Ms. Lauzon both signed a residential tenancy agreement with a corporate landlord, CPA. I will refer to Ms. Bourgon and Ms. Lauzon as the tenants.
14. Under the tenancy agreement's terms, the tenancy began on November 3, 2021 and ended on November 30, 2022, at which time it continued on a month-to-month basis. The tenants agreed to pay a total of \$2,175 in monthly rent. The rent did not include any utilities. The tenants also paid a \$1,087.50 security deposit. These amounts are reflected in CPA's ledger, which Ms. Bourgon provided as evidence.
15. Ms. Reaume signed the rental agreement as guarantor for Ms. Lauzon, which means she guaranteed Ms. Lauzon's debts to CPA. However, there is no evidence that she ever guaranteed any claims or debts Ms. Bourgon might have against Ms. Lauzon. Ms. Bourgon did not allege this or explain why Ms. Reaume should be liable. So, I dismiss all claims against Ms. Reaume. My decision below addresses Ms. Lauzon's liability.
16. The tenants did not formally document their own agreement. However, text messages indicate they generally agreed to split rent and utilities. I discuss this in detail below.
17. I turn back to the chronology. The tenants' relationship deteriorated rapidly. On November 20, 2021, Ms. Bourgon asked Ms. Lauzon by text if she still wanted to live at the rental property, and if not, if she would like to find a new roommate to replace Ms. Lauzon. Ms. Lauzon replied to her that same day, "I've decided I'm going to leave". Similarly, on November 22, 2021, Ms. Lauzon texted, "At this current moment I am not coming back". Ms. Lauzon advised CPA of her intent to leave at around this time.
18. CPA emailed the tenants on November 24, 2021. CPA said it required the tenants to provide written notice by November 30, to end the lease by December 31, 2021. I find

CPA's email consistent with section 14(1) of the rental agreement. It says that a tenant may end the tenancy by giving the landlord at least one month's written notice.

19. The parties discussed whether Ms. Bourgon would stay at the rental property. In the November 25, 2021 text messages, Ms. Bourgon expressed some reluctance at leaving. She said she lacked funds to pay another rental deposit. In another undated text message, Ms. Lauzon wrote, "I will pay the breaking of the lease. I want this done with. The damage deposit will go towards it and I will cover the rest." Ms. Bourgon agreed and told Ms. Lauzon to sign and send a letter to CPA advising they both wished to terminate the rental agreement early. Based on the context I find the tenants exchanged these text messages on December 1, 2021. That same day, the tenants sent a signed letter to CPA. They wrote that they were providing notice to "break the lease" as of December 31, 2021.
20. As the tenants provided notice on December 1, 2021, I find they did not provide sufficient notice to end the lease by December 31, 2021. This is because they did not provide a full month. Consistent with this, the ledger shows CPA charged the tenants \$2,175 on December 12, 2021, for ending the lease without sufficient notice.
21. I also find that, given the clear wording of the text messages, Ms. Lauzon agreed to indemnify Ms. Bourgon for any amounts owing to the landlord in excess of the damage deposit. I find this includes CPA's \$2,175 charge for liquidated damages for breaching the lease. In return, Ms. Lauzon avoided any obligation to find a subtenant to replace herself in the rental property.
22. Ms. Bourgon completed a move-out form on December 28, 2021. Ms. Lauzon did not sign it, and the parties' submissions indicate that by then she had moved out. The ledger shows that CPA charged Ms. Bourgon \$84 in total for cleaning on January 5 and 6, 2022. From my review of the ledger, I find that Ms. Bourgon paid CPA \$2,175 for insufficient notice, \$100 for a December 2021 parking stall fee, and the \$84 cleaning fee. In an email submission Ms. Reaume said that the tenants chose not to dispute any of these fees with CPA, so I find this was the case.

***What are the appropriate remedies?***

23. As noted above, Ms. Bourgon claims \$2,175 as reimbursement or indemnification of liquidated damages paid to CPA. I have found that both tenants decided not to dispute this amount, and Ms. Lauzon agreed to pay it. So, I order Ms. Lauzon to pay Ms. Bourgon \$2,175.
24. There is no indication that Ms. Lauzon agreed to pay the whole \$84 cleaning fee. The ledger shows the tenants forfeited their deposit and it did not cover the cleaning fee. The tenants both declined to contest this fee. In these circumstances, I find that Ms. Lauzon should pay for half the fee. This equals \$42.
25. Ms. Bourgon also claims \$187.83 for allowing Ms. Lauzon to use the larger of 2 bedrooms at the rental property for 2 months. For the reasons that follow, I dismiss this claim.
26. The tenants' text messages indicate the rental property had a larger and smaller bedroom. Text messages show Ms. Bourgon offered the master bedroom to Ms. Lauzon. In return, the tenants would split rent \$1,000 and \$1,175, respectively. I note this meant that Ms. Lauzon would pay \$87.50 more than splitting monthly rent evenly at \$1,087.50. Ms. Lauzon replied that she wanted to discuss the issue in person. In other text messages, Ms. Lauzon suggested paying for property insurance for the use of the master bedroom. The text messages indicate the tenants did not reach any agreement.
27. Consistent with my conclusion, and as noted, the tenants' relationship broke down shortly after they began the tenancy. So, I find it unproven that Ms. Lauzon agreed to pay an extra \$187.83 in rent. I dismiss this claim for this reason.
28. Ms. Bourgon says Ms. Lauzon agreed to pay the \$100 monthly fee for a parking stall. She claims reimbursement for this amount. I find it likely that the parties agreed that Ms. Lauzon would pay for the stall, as it is undisputed that Ms. Bourgon had no vehicle and only Ms. Lauzon used the stall. I find that Ms. Lauzon agreed to indemnify Ms. Bourgon for this as part of the agreement for her to pay for costs in connection with

breaking the lease. The tenants did not contest this amount with the landlord. So, I order Ms. Lauzon to pay Ms. Bourgon \$100.

29. Ms. Bourgon also claims \$288.13 for Ms. Lauzon's share of utilities for November 2021. I find an undated text message between the tenants proves that they agreed to split utilities equally.
30. Ms. Bourgon provided a \$238.48 receipt dated December 1, 2021 for hydro, a \$135.10 invoice dated November 29, 2021 for Internet access, and a \$49.65 invoice dated December 10, 2021 for another utility bill. These total \$423.23. I find Ms. Bourgon is entitled to reimbursement of half this amount. This equals \$211.62.
31. In summary, I find Ms. Lauzon owes  $(\$2,175 + \$42 + \$100)$  \$2,317 to reimburse Ms. Bourgon amounts paid to the landlord, and 211.62 for utilities, for a total of \$2,528.62. The *Court Order Interest Act* applies to the CRT. The ledger shows Ms. Bourgon paid all amounts owing to CPA by January 6, 2022. So, I find Ms. Bourgon is entitled to pre-judgment interest on the \$2,528.62 debt from January 6, 2022, to the date of this decision. This equals \$13.85.
32. 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. I find Ms. Bourgon is entitled to reimbursement of \$125 in CRT fees. She also claims \$22.72 as reimbursement for registered mail costs. I decline to award this amount as it was not supported by a receipt or other supporting evidence.

## **ORDERS**

33. Within 30 days of the date of this order, I order Ms. Lauzon to pay Ms. Bourgon a total of \$2,667.47, broken down as follows:
  - a. \$2,317 as reimbursement for amounts paid by Ms. Bourgon to their landlord,
  - b. \$211.62 for partial reimbursement of utilities,

- c. \$13.85 in pre-judgment interest under the *Court Order Interest Act*, and
- d. \$125 in CRT fees.

34. Ms. Bourgon is entitled to post-judgment interest, as applicable.

35. I dismiss all claims against Ms. Reaume.

36. 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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David Jiang, Tribunal Member