



# Civil Resolution Tribunal

Date Issued: October 20, 2022

File: SC-2022-000144

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moore v. Verigin*, 2022 BCCRT 1149

BETWEEN:

TIMOTHY MOORE

**APPLICANT**

AND:

JAMES VERIGIN

**RESPONDENT**

AND:

TIMOTHY MOORE

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. Timothy Moore rented woodworking space from James Verigin under a 6-month lease. As the lease neared the end of its term, the parties unsuccessfully tried to negotiate a new lease. Mr. Moore moved out on May 23, 2021, 9 days after the written lease agreement expired.
2. Mr. Moore seeks the return of his \$750 damage deposit. Mr. Verigin says Mr. Moore is not entitled to his damage deposit because he damaged and failed to clean the rental unit, which Mr. Moore denies.
3. In the counterclaim, Mr. Verigin seeks \$1,071.13 in rent for the overstay, damage to walls and the floor, and utility charges, without providing a breakdown. Mr. Moore says other than the electricity he owes nothing because Mr. Verigin failed to provide a new lease and tried to increase the rent without notice.
4. Each party is 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. 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, the parties in this dispute call into question each other's

credibility. Credibility of 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. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, I decided to hear this dispute through written submissions.

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.

## **ISSUES**

9. The issues in this dispute are:
  - a. What, if anything, must Mr. Moore pay for rent and electricity given he stayed 9 days beyond the written lease agreement's end?
  - b. Was Mr. Verigin entitled to keep some or all of the damage deposit?

## **EVIDENCE AND ANALYSIS**

10. As the applicant in this civil proceeding, Mr. Moore must prove his claims on a balance of probabilities, meaning more likely than not. Mr. Verigin must prove his counterclaims to the same standard. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

11. The parties signed a lease agreement on November 14, 2020. Mr. Moore leased 2 rooms for his woodworking shop for 6 months, from November 15, 2020 to May 14, 2021. The rent was \$750 per month, due on the 15<sup>th</sup>, plus “cash for Fortis electricity.” The agreement required Mr. Moore to pay \$750 toward the last month’s rent, and \$750 as a refundable “security damage deposit” (damage deposit) in advance. Mr. Moore undisputedly paid these amounts.

### ***Rent and electricity***

12. Mr. Verigin does not challenge Mr. Moore’s evidence about the parties’ attempts to negotiate a new lease, so I accept it. I find that in April 2021, Mr. Moore and Mr. Verigin verbally agreed that Mr. Moore could vacate the back room and continue to rent just the front room at \$1 per square foot, or \$620 per month, starting May 15. Mr. Moore had the back room clear and clean by the May 14 lease end date. So, this is not a case of a tenant “overholding” a lease.

13. However, Mr. Verigin did not provide a new written lease for Mr. Moore to sign and the parties did not speak again until after the lease expired. I find Mr. Verigin’s failure to provide a written lease did not mean the parties did not have an agreement. I note the previous lease contemplated that after 6 months, the rent would be \$1 per square foot. In the absence of any indication otherwise, I find the lease became a month-to-month lease.

14. On May 21, Mr. Verigin advised that he wished to raise the rent, but did not say what rent he wanted. In a May 21 email, Mr. Moore suggested Mr. Verigin prepare a new lease agreement with a new rent to take effect June 15, which Mr. Moore would consider.

15. Mr. Verigin responded to that email but did not address the rent. He said that earlier that day, Mr. Moore physically assaulted him, which he said was an offence under the Criminal Code and required his attention. Mr. Moore responded that he was ending the lease. It is undisputed that Mr. Moore vacated the property on May 23, 2021.

16. In submissions, Mr. Moore says he simply pushed past Mr. Verigin, causing him to take a step backwards. I find the details do not matter because Mr. Verigin does not claim in either assault or battery, and does not claim that the physical contact breached a term of the lease agreement.
17. I note Mr. Verigin claims entitlement to “last months rent” but does not say what the rent for the last month was. I accept Mr. Moore’s evidence that the parties agreed on \$620 plus electricity on a month-to-month basis until otherwise agreed. I find no express or implied terms about notice in the parties’ agreement. Accordingly, I find Mr. Moore was free to end the tenancy whenever he wanted, but was not entitled to any reduction in rent for the balance of the time he was entitled to occupy the rental unit but chose not to. So, even though Mr. Moore moved out on May 23, I find he was obligated to pay \$620 plus electricity for May 15-June 14 rent.
18. To the extent that Mr. Moore argues that Mr. Verigin breached the parties’ contract by failing to provide a new written lease agreement or attempting to increase the rent without notice, I find there was no breach. Mr. Moore asked for the written lease agreement, and indicated in his May 21 email that he was open to a new lease with increased rent.
19. As for the electricity, Mr. Verigin provided copies of 2 bills. Mr. Moore concedes that he owes \$48.04 for the March 28 – April 28, 2021 bill. He says he should only pay \$25 of the April 28 – May 28 bill for \$43.17 as he was moved out by May 23 and negotiated a discount for an exterior light Mr. Verigin turned on. Mr. Verigin did not dispute this or set out what portion Mr. Moore was responsible for. I find \$25 is reasonable, so I find Mr. Verigin entitled to \$68.17 for electricity.
20. Taking rent and electricity together, I find Mr. Verigin is entitled to \$688.17, subject to any set off for the damage deposit.

### ***Damage Deposit***

21. As the property owner seeking to keep the \$750 damage deposit, Mr. Verigin must prove on a balance of probabilities that Mr. Moore caused property damage or failed

to adequately clean the rental unit, and must prove the related costs incurred (see the non-binding but persuasive decision in *Tamuno v. Shannon*, 2021 BCCRT 1223, at paragraph 25).

22. Mr. Verigin acknowledges that Mr. Moore cleaned the rental unit but says he did not wipe down the walls or ceiling, which he says were coated with wood dust. Mr. Verigin also says Mr. Moore left paint or stain splatters on the floors, and damaged walls with a shelving rack. Mr. Verigin provided a receipt for cleaning and a quote for painting.
23. Mr. Moore denies causing any damage beyond reasonable wear and tear. He says he cleaned, swept and vacuumed the space before leaving and left the space better than he found it. Mr. Moore submitted photos of the space when he moved in and when he left. The photos show clean rooms and no visible changes. They also show pre-existing splatters on the floor.
24. Weighing all the evidence, I find Mr. Verigin has not proved on a balance of probabilities that Mr. Moore caused any damage or left the rental unit unclean. Mr. Verigin did not submit any photos to document the alleged dust or wall damage. He did not do a walkthrough inspection with Mr. Moore before the lease began, and did not attempt to do one when Mr. Moore ended the lease. While a walkthrough is not strictly necessary, it is difficult to prove damage without any photos or documentation of the rental unit's condition before and after. On balance, I find Mr. Moore is entitled to a refund of his \$750 damage deposit.
25. As I have found Mr. Moore entitled to the claimed \$750 but responsible for \$688.17 for rent and electricity in the counterclaim, the net result is that Mr. Verigin must pay Mr. Moore \$61.83.
26. The *Court Order Interest Act* applies to the CRT. Mr. Moore is entitled to pre-judgment interest on the \$61.83 from June 15, 2021, when I find the damage deposit should have been repaid, to the date of this decision. This equals \$0.62.
27. 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. As Mr. Moore's claim was successful, I find he is entitled to reimbursement of \$125 in CRT fees. Mr. Verigin's claim was only partially successful, I find he is entitled to reimbursement of \$50 for half his \$100 in CRT fees. The net result is that Mr. Verigin must pay Mr. Moore \$75 for CRT fees. Neither party claims any dispute-related expenses.

## **ORDERS**

28. Within 14 days of the date of this order, I order Mr. Verigin to pay Mr. Moore a total of \$137.45, broken down as follows:
  - a. \$61.83 in debt,
  - b. \$0.62 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$75.00 in CRT fees.
29. Mr. Moore is entitled to post-judgment interest, as applicable.
30. I dismiss the balance of the parties' respective 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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Micah Carmody, Tribunal Member