



Civil Resolution Tribunal

Date Issued: November 9, 2022

File: SC-2022-002970

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alipour v. Howard*, 2022 BCCRT 1229

BETWEEN:

PHILIP ALIPOUR

APPLICANT

AND:

NELL HOWARD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about shared accommodation.
2. The applicant, Philip Alipour, says that his landlord, the respondent Nell Howard, refused to refund his \$200 damage deposit after he moved out of Ms. Howard's home. Mr. Alipour seeks the \$200 deposit's return.

3. Ms. Howard says that she did not refund Mr. Alipour's deposit because he allegedly damaged a desk that she provided to him when he moved in. Ms. Howard says that she used the \$200 deposit to purchase a replacement desk.
4. The parties are each self-represented in this dispute.

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. Some of the evidence in this dispute amounts to a "he 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.
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.

Preliminary Issues

Jurisdiction

9. Generally, the CRT does not have jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, section 4 of the RTA says the RTA does not apply to disputes where a tenant shares a kitchen or bathroom with the owner. It is undisputed that the parties in this dispute shared a kitchen and bathroom. So, I find this dispute falls within the CRT's small claims jurisdiction set out in section 118 of the CRTA.

Evidence

10. In some of Mr. Alipour's evidence and written submissions, he refers to discussions that took place between the parties during the CRT's facilitation stage, including certain alleged admissions made by Ms. Howard. CRTA rule 1.11 says that communications made attempting to settle claims by agreement in the tribunal process are confidential and must not be disclosed during the tribunal decision process. CRTA rule 1.11 exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. However, if the parties agree, settlement discussions from the CRT's facilitation stage may be disclosed. Here, I have no evidence of such an agreement between the parties. So, given the confidential nature of discussions between parties during the CRT's facilitation stage and the absence of an agreement between the parties to disclose such information, I have not considered these discussions in reaching my decision.

11. Further, Mr. Alipour provided some evidence in response to Ms. Howard's written submissions after the CRT's deadline. Ms. Howard had the opportunity to review and respond to this late evidence but did not provide any submissions. Consistent with the CRT's mandate that includes flexibility, and since Ms. Howard has had the opportunity to review and respond to it, I find there is no prejudice to Ms. Howard in allowing the late evidence. So, I accept the late evidence and have considered it in my decision below other than those portions that refer to the parties' discussions during the CRT's facilitation stage which, as noted above, are confidential.
12. Lastly, in her written submissions, Ms. Howard refers to 3 documents, 2 of which she says are "attached" and 1 she says she will later forward. However, Ms. Howard did not upload these documents or any other evidence into the CRT's online portal, despite having the opportunity to do so. In any event, Mr. Alipour provided 2 out of these 3 documents as part of his evidence and I have considered these 2 documents in making my decision. Ms. Howard refers to the third document as an email from the university asking homeowners to consider renting a room in their house. Bearing in mind proportionality, I did not seek a copy of this email from Ms. Howard because given its description, I find it is not relevant. In particular, Ms. Howard's decision to rent a room, even if the university's email asked that owners provide a desk, does not establish that the desk in question was provided in good condition, as Ms. Howard says.

Additional Remedies

13. In his submissions, Mr. Alipour asks for certain orders not sought in the Dispute Notice. I discuss each of these in turn below.
14. First, Mr. Alipour says that Ms. Howard relies on false or misleading evidence and asks the CRT to consider applying the penalty set out in CRTA section 92. CRTA section 92 makes it an offence to provide the CRT with false or misleading information. I find that I do not have the authority to decide whether someone has committed an offence under CRTA section 92. Rather, under the *Provincial Court*

Act, a BC Provincial Court judge has jurisdiction over CRTA section 92 offences because conviction carries the possibility of imprisonment.

15. In his submissions, Mr. Alipour also says that Ms. Howard “must not be allowed to take in any students in the future” due to alleged poor treatment and abuse by Ms. Howard. I infer Mr. Alipour seeks an order preventing Ms. Howard from renting rooms in her home to other students. This is a form of injunctive relief (an order to do or stop doing something) that is not permitted by CRTA section 118.
16. In his evidence submissions, Mr. Alipour also says that Ms. Howard should pay \$4,275 for ongoing damages and abuse for causing delays in his PhD research work and negatively impacting his mental health. As noted above, all 3 of these additional requested remedies were not raised in the Dispute Notice. The Dispute Notice focuses solely on the \$200 damage deposit and its return. So, I find these requested remedies are not properly before me and decline to address them. However, I do address below my findings about the alleged misleading evidence Mr. Alipour says Ms. Howard relies on.

ISSUE

17. The issue in this dispute is whether Ms. Howard must return the \$200 damage deposit to Mr. Alipour.

EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, as the applicant, Mr. Alipour must prove his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
19. The following facts are undisputed. Mr. Alipour rented a room in Ms. Howard’s home starting December 24, 2018. Around this time, Mr. Alipour paid Ms. Howard a \$200 damage deposit. Mr. Alipour moved out of Ms. Howard’s home on March 8, 2022.

20. Ms. Howard undisputedly has not returned Mr. Alipour's \$200 damage deposit. As mentioned above, Ms. Howard says she was entitled to keep the \$200 deposit because Mr. Alipour allegedly damaged a desk she provided to him. Mr. Alipour denies damaging any desk. He further says that the desk Ms. Howard refers to was damaged before he moved in and Ms. Howard chose to throw it out in December 2018.
21. Emails and text messages in evidence show that after he moved out, Mr. Alipour contacted Ms. Howard on March 13, March 14, April 2, April 9 and April 16, 2022 asking when he would receive his damage deposit back. Ms. Howard did not respond until April 16, 2022. In this email, she referred to a broken desk, which she said she had not yet had time to replace. Ms. Howard said that the desk that Mr. Alipour had left behind was not adequate. On April 27, 2022, Ms. Howard told Mr. Alipour that she had to take the price of a new desk out of his damage deposit and that he could pick up the desk he left behind in a day or two.
22. Mr. Alipour refers to an email exchange from December 19 and 20, 2018. In these emails, Mr. Alipour told Ms. Howard that he had brought his compact computer table and chair and installed them alongside her existing furniture. Ms. Howard responded that when Mr. Alipour arrived, she wanted his help removing both the desk and the shelf in the closet to the roadside. Mr. Alipour says that based on this request, he helped Ms. Howard remove her desk from his room and put it by the road.
23. In her submissions, Ms. Howard alleges Mr. Alipour fabricated the above email exchange, which Mr. Alipour denies. The late evidence Mr. Alipour provided addresses this allegation. In particular, Mr. Alipour provided screenshots of his email inbox showing these emails, as well as information from Kutools, an add-on software that shows the metadata from these emails. Ms. Howard provided no evidence in support of her allegation that these emails were fabricated. So, based on the evidence before me, I find the December 18 and 19, 2018 email exchange is authentic and that Ms. Howard asked Mr. Alipour to help her remove the disputed desk from his room in December 2018.

24. Mr. Alipour also provided a photograph of his computer desk in the room he rented from Ms. Howard. He further provided email evidence that I find proves he purchased this desk in late December 2018. I find it unlikely that Mr. Alipour would have purchased this computer desk if Ms. Howard had provided him with a functional desk in his room.
25. As mentioned above, Ms. Howard did not provide any evidence in this dispute. So, there is no evidence before me showing the allegedly broken desk. However, the evidence includes an April 25, 2022 email from Ms. Howard to Mr. Alipour attaching what Ms. Howard said was a picture of the desk in Mr. Alipour's room when he arrived. Mr. Alipour says this email is misleading because the photograph is not from December 2018. Rather, he says that the metadata from the photograph shows that it was taken on April 21, 2013. Ms. Howard did not respond to this allegation in her submissions. I have reviewed the metadata and find the photograph was taken in 2013. So, I find it more likely than not that this 2013 photograph does not properly represent the desk's condition in December 2018.
26. Based on the evidence before me, I find Ms. Howard and Mr. Alipour likely removed the disputed desk from Mr. Alipour's room in December 2018, per Ms. Howard's request. So, I find it unlikely that Mr. Alipour damaged the disputed desk.
27. There is no evidence before me of any agreement between the parties that Mr. Alipour was required to leave a desk in the room when he moved out. Although it is undisputed that Mr. Alipour purchased and left behind a desk that Ms. Howard thought was inadequate, I do not find this proves that Mr. Alipour was required to provide a desk.
28. In summary, I find there was no agreement between the parties for Mr. Alipour to leave a desk behind. I also find it unproven that Mr. Alipour damaged Ms. Howard's desk. Since Ms. Howard does not allege Mr. Alipour caused any other damage, I find Mr. Alipour is entitled to the \$200 deposit's return. So, I order Ms. Howard to pay this amount to Mr. Alipour.

29. The *Court Order Interest Act* applies to the CRT. However, Mr. Alipour expressly waives any claim for pre-judgment interest, so I make no order for interest.
30. 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. Mr. Alipour is entitled to reimbursement of \$125 in CRT fees. Neither party claims any dispute-related expenses.

ORDERS

31. Within 21 days of the date of this decision, I order Ms. Howard to pay Mr. Alipour a total of \$325, broken down as follows:
- a. \$200 in debt, and
 - b. \$125 for CRT fees.
32. Mr. Alipour is entitled to post-judgment interest, as applicable.
33. 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.

Nav Shukla, Tribunal Member