



Civil Resolution Tribunal

Date Issued: November 10, 2022

File: SC-2022-002335

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sawickyj v. Polyhronopoulos*, 2022 BCCRT 1235

B E T W E E N :

AMANDA SAWICKYJ

APPLICANT

A N D :

LEAH ELIZABETH POLYHRONOPOULOS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Amanda Sawickyj and Leah Elizabeth Polyhronopoulos were roommates in a Vancouver apartment. Ms. Sawickyj alleges that Ms. Polyhronopoulos moved out without providing adequate notice. Ms. Sawickyj claims \$1,225 for a month of unpaid rent.

2. Ms. Polyhronopoulos denies giving inadequate notice. She also says that Ms. Sawickyj did not try hard enough to find a new roommate. Finally, she says that Ms. Sawickyj withheld her \$612.50 damage deposit based on false accusations of stealing and damaging her room and furniture. She asks that I dismiss Ms. Sawickyj's claim. Ms. Polyhronopoulos did not file a counterclaim for the damage deposit.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. Ms. Sawickyj provided late evidence, mostly comprised of complete versions of text message conversations that Ms. Polyhronopoulos provided only excerpts of. I found the new evidence relevant. Ms. Polyhronopoulos commented on the late evidence. I find that there is no procedural unfairness in accepting the late evidence, and I have considered it.
9. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch under the *Residential Tenancy Act*. However, this dispute is not about a residential tenancy agreement between a landlord and a tenant. Instead, it is a contractual disputes between 2 roommates, which I find is within the CRT's small claims jurisdiction over debt and damages.

ISSUES

10. The issues in this dispute are:
 - a. Did Ms. Polyhronopoulos give the required amount of notice?
 - b. If not, did Ms. Sawickyj unreasonably fail to find a new roommate?
 - c. If Ms. Polyhronopoulos owes Ms. Sawickyj any rent, is Ms. Polyhronopoulos entitled to a set off for the damage deposit?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Ms. Sawickyj as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. Ms. Polyhronopoulos moved into Ms. Sawickyj's 2-bedroom apartment on November 14, 2021. Ms. Sawickyj had lived there with a different roommate since October 2, 2021. The parties both signed a November 8, 2021 "Addendum" to a 1-year residential tenancy agreement dated February 11, 2021. Neither were parties to that initial lease, as the apartment had changed hands several times between February and November 2021. By signing the addendum, Ms. Polyhronopoulos and Ms. Sawickyj agreed to be bound by the original lease. In other words, they were co-tenants who were jointly responsible for the \$2,450 monthly rent.
13. There is no written agreement between Ms. Sawickyj and Ms. Polyhronopoulos about how they would share rent or other expenses. It is undisputed that the parties agreed to split rent equally, which is \$1,225 per month. It is also generally undisputed that they agreed if either of them wanted to leave, they would give a reasonable amount of notice. They disagree slightly on the details of this. Ms. Sawickyj says Ms. Polyhronopoulos needed to give 30 days' notice. Ms. Polyhronopoulos says it was a month's notice. I find that the parties' agreement required a clear month's notice. I say this because this would reflect the notice terms of the main lease, which makes practical sense.
14. I pause to note that Ms. Sawickyj makes several arguments about the terms of the main lease in relation to both giving notice and the damage deposit. Ms. Polyhronopoulos denies ever seeing a copy of the original lease, but I find that nothing turns on this. I find that this dispute is only about the agreement between the parties as co-tenants, not their agreement with their landlord.
15. Ms. Polyhronopoulos says that on March 1, 2022, she gave notice that she would be moving out at the end of March. Ms. Sawickyj says Ms. Polyhronopoulos did not give notice until March 7. Either way, I find that it was less than the required month. I find that the parties' agreement required Ms. Polyhronopoulos to give notice by February 28, 2022, so she breached the contract by providing inadequate notice. I therefore find that Ms. Polyhronopoulos must pay Ms. Sawickyj for her share of April's rent,

subject to Ms. Polyhronopoulos's arguments about finding a new roommate and the damage deposit.

16. *Did Ms. Sawickyj unreasonably fail to promptly find a new roommate?*
17. It is undisputed that Ms. Sawickyj did not find a new roommate until May 1, 2022. Ms. Polyhronopoulos argues that Ms. Sawickyj should have found a new roommate faster. Ms. Polyhronopoulos does not use this term, but she essentially argues that Ms. Sawickyj failed to mitigate her damages. When someone breaches a contract, the innocent party must take *reasonable* steps to reduce their monetary losses. Here, Ms. Sawickyj's monetary loss was Ms. Polyhronopoulos's share of April rent. I find that Ms. Sawickyj had to reduce that loss if she could, which in this context means taking reasonable steps to find a new roommate. Ms. Polyhronopoulos must prove that Ms. Sawickyj failed to mitigate her damages.
18. On March 8, 2022, Ms. Sawickyj posted a Facebook ad to find a new roommate. On March 15, Ms. Polyhronopoulos reposted it. Ms. Polyhronopoulos texted Ms. Sawickyj the same day that she was getting lots of responses.
19. Ms. Polyhronopoulos provided *Facebook* screenshots showing that she forwarded 4 potential roommates' responses to Ms. Sawickyj between March 15 and March 18, 2022. Of those, one said they were moving to Vancouver the following week, one said they were moving "in April", and one said they were moving "shortly".
20. Ms. Sawickyj says she contacted all 4 potential roommates, but none of them was ready to move in April. She did not provide any evidence of these conversations or say when they happened. I find *that* her assertion contradicts what the potential roommates themselves said in their expressions of interest. Ms. Sawickyj did not provide any other evidence of her attempts to find a new roommate.

21. Ms. Sawickyj also says that she was out of town visiting family in March, so she could not show the apartment to *prospective* roommates. She does not say exactly when or for how long she was gone. She was home on March 7, when she says Ms. Polyhronopoulos gave her notice, and on March 31, when Ms. Polyhronopoulos moved out. In any event, Ms. Sawickyj advertised the room on Facebook, so I find that being in Ontario would not have impacted *her* ability to initially screen potential roommates via text, phone, or video chat. That said, I accept that being out of town likely had an impact on Ms. Sawickyj's ability to find a new roommate.
22. Still, I find that Ms. Polyhronopoulos's *Facebook* messages show that there were likely suitable roommates available before May 1. Ms. Sawickyj does not say that any of the people she contacted were unsuitable for any reason. I find that with reasonable diligence, Ms. Sawickyj likely could have re-rented Ms. Polyhronopoulos's room by April 15, 2022. I find that her failure to reasonably mitigate her damages means that she is not entitled to the second half of April's rent from Ms. Polyhronopoulos, which is \$612.50.
23. *Is Ms. Polyhronopoulos entitled to a set off for the damage deposit?*
24. It is undisputed that Ms. Polyhronopoulos paid a \$612.50 damage deposit to Ms. Sawickyj before moving in. Based on their submissions, I find that the parties implicitly agree that this was to cover any damage Ms. Polyhronopoulos may have caused during her tenancy. I find that Ms. Sawickyj was only entitled to withhold funds for any damage beyond reasonable wear and tear, because this reflects the terms of the primary lease and because it is a reasonable term to imply into their agreement. Contrary to Ms. Sawickyj's submissions, I find that if there was no such damage, she must return the damage deposit to Ms. Polyhronopoulos.
25. Ms. Polyhronopoulos did not counterclaim for a return of her damage deposit, but she raised it in her Dispute Response as a defence to Ms. Sawickyj's claims. I find that Ms. Polyhronopoulos is essentially claiming a set-off. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted. A party who owes someone money, like Ms. Polyhronopoulos, can claim

a set-off if it is so closely *connected* with the other party's claim that it would be unjust not to set them off against each other. See *Jamieson v. Loureiro*, 2010 BCCA 52, at paragraph 34. I find that the damage deposit is closely related to the rent owing, and a set-off is appropriate if proven.

26. Ms. Sawickyj alleges several types of damage, which she must prove to justify retaining the damage deposit. First, Ms. Sawickyj says that Ms. Polyhronopoulos damaged the laminate flooring in a corner of her bedroom by separating 2 floorboards. Second, she says that there was a "poorly done patch job" to the drywall behind the bed. Third, she says that there were "small pin holes" behind where Ms. Polyhronopoulos put her desk. Finally, she says that Ms. Polyhronopoulos damaged the bottom of a bedside table. Ms. Polyhronopoulos denies causing any of this damage. I find that I do not need to determine whether she did. Based on the photos in evidence, I find that none of the alleged damage is serious enough to justify withholding any part of the damage deposit. I find that, at worst, the photos show reasonable wear and tear.
27. Ms. Sawickyj also alleges that Ms. Polyhronopoulos stole several items when she moved out, namely a *baking* sheet, a tea ball steeper, a knife, a bottle opener, a garlic press, and 2 bottles of bleach. Ms. Polyhronopoulos denies this. There is no objective evidence either way. I am not persuaded that Ms. Polyhronopoulos stole this random assortment of low value kitchen items.
28. In summary, I find that Ms. Sawickyj has not proven that she is entitled to retain any of the \$612.50 *damage* deposit. Because I have concluded that Ms. Polyhronopoulos owes Ms. Sawickyj \$612.50 in rent, the parties' debts cancel each other out. Accordingly, I dismiss Ms. Sawickyj's claim for unpaid rent.
29. 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. Ms. Sawickyj was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses.

ORDER

30. I dismiss Ms. Sawickyj's *claims*, and this dispute.

Eric Regehr, Tribunal Member