



Civil Resolution Tribunal

Date Issued: November 25, 2022

File: SC-2022-003267

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ramon v. Clarke*, 2022 BCCRT 1273

BETWEEN:

MELODIE RAMON

APPLICANT

AND:

KAIN CLARKE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This is a roommate dispute. The respondent, Kain Clarke, rented a room from the applicant, Melodie Ramon. Ms. Ramon says that Mr. Clarke failed to pay the full amount due for rent in May 2022, which was the last month of his tenancy. Ms. Ramon claims \$290 for the outstanding portion of Mr. Clarke's last months' rent.

2. Mr. Clarke admits that he was \$290 short for his May 2022 rent payment. However, he says Ms. Ramon kept his \$290 damage deposit. Mr. Clarke says he did not cause any damage, and so his damage deposit was sufficient to cover the outstanding rent he owed to Ms. Ramon.
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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

8. 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.

ISSUE

9. The issue in this dispute is to what extent, if any, Mr. Clarke owes Ms. Ramon \$290 for outstanding rent.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant Ms. Ramon must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence, but I refer only to what I find is necessary to explain my decision.
11. Ms. Ramon undisputedly rented a property from the property's manager, PW, and she then sublet one bedroom to Mr. Clarke for \$620 per month. It is also undisputed that Mr. Clarke paid Ms. Ramon a \$290 damage deposit.
12. The evidence shows that Ms. Ramon provided Mr. Clarke with an April 8, 2022 letter advising that she and PW had mutually agreed to end her tenancy, and so Mr. Clarke's occupancy also had to end. The letter stated that Mr. Clarke had to vacate the property by May 31, 2022. Mr. Clarke does not dispute the validity of this notice to vacate.
13. Mr. Clarke admits that he paid Ms. Ramon only \$330 for May 2022 rent. The evidence shows that he made this payment on May 12, 2022, and that Ms. Ramon started her CRT application for the unpaid portion of May's rent that same day. Given Mr. Clarke's admission, I find that he owes Ms. Ramon \$290 for unpaid rent.

14. I note that the parties' tenancy agreement included an addendum that stated late rent was subject to a \$10 per day late rent fee. However, Ms. Ramon did not include a claim for any late rent fee in the Dispute Notice, and she expressly submits that she is "willing to let this go", so I make no findings about it.
15. It is undisputed that Ms. Ramon did not return Mr. Clarke's \$290 damage deposit when he moved out. The parties' text messages show that Mr. Clarke told Ms. Ramon to keep his damage deposit for the outstanding rent. I infer that Mr. Clarke is saying he is entitled to set-off his unreturned damage deposit from the amount he owes Ms. Ramon for rent.
16. Ms. Ramon argues that she was entitled to keep the damage deposit because Mr. Clarke failed to move out by May 31, 2022, and he damaged the property. So, she says Mr. Clarke still owes her for the \$290 in outstanding rent. For the following reasons, I disagree.
17. First, there is no evidence that Ms. Ramon remained PW's tenant or owed PW any rent after May 31, 2022. Mr. Clarke provided text messages showing he made a separate agreement with PW to move out on June 1, 2022. So, I find nothing turns on the fact that Mr. Clarke moved out after the May 31, 2022 notice date Ms. Ramon provided, and I find he does not owe her any rent for the extra day.
18. Second, I find Ms. Ramon has not proven that Mr. Clarke damaged the property. As the landlord, Ms. Ramon bears the burden to prove damage. She provided photos of what I infer are common rooms, with various drawings and writing on the walls. However, Mr. Clarke denies any knowledge or participation in the damage shown in the photos. The photos are not date-stamped, though Ms. Ramon indicates they were taken on July 8, 2022, which was long after Mr. Clarke had moved out. Further, Mr. Clarke says at least 8 people were living on the property at any given time, which Ms. Ramon does not dispute. For these reasons, I find there is insufficient evidence to establish that Mr. Clarke was responsible for the damage shown in Ms. Ramon's photos.

19. Third, Mr. Clarke provided photos that he took and texted to both PW and Ms. Ramon on June 1, 2022, after he had moved his belongings out of his room. I find the photos show his room in a reasonably clean and undamaged state when he moved out.
20. Overall, I find that Ms. Ramon was not entitled to keep Mr. Clarke's damage deposit because she has not proven he left the property unreasonably dirty or damaged. Therefore, I find that Mr. Clarke is entitled to set-off his unreturned \$290 damage deposit against the \$290 he owes Ms. Ramon for rent, which reduces his debt to \$0. The result is that I must dismiss Ms. Ramon's claim.
21. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their paid CRT fees and reasonable dispute-related expenses. However, neither party paid CRT fees and neither party claimed dispute-related expenses, so I make no order for them.

ORDER

22. I dismiss Ms. Ramon's claims, and this dispute.

Kristin Gardner, Tribunal Member