



# Civil Resolution Tribunal

Date Issued: November 25, 2022

File: SC-2022-002308

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lam v. Zhao*, 2022 BCCRT 1276

BETWEEN:

LUCIA LAM

**APPLICANT**

AND:

JING WEI ZHAO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. The applicant, Lucia Lam, rented a house from the respondent, Jing Wei Zhao. Ms. Lam then sublet the house to other tenants under her company's name, CSE. Ms. Lam says that Mr. Zhao colluded with one of CSE's tenants, NY, to get Ms. Lam evicted for failing to pay rent. Ms. Lam claims \$5,000 in damages, as discussed below.

2. Mr. Zhao says he rented his property to Ms. Lam on the understanding that she would be living in it, but that Ms. Lam sublet the entire property to various tenants without his knowledge or consent. Mr. Zhao also says Ms. Lam was properly evicted by the Residential Tenancy Branch (RTB), and so he does not owe her anything for lost rental income.
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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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 matters***

9. First, in Ms. Lam's submissions, she alleges that NY defamed her on social media, which Ms. Lam values at \$2,000 in additional damages. Ms. Lam did not submit any documentary evidence in this dispute, and NY is not a party to this dispute. Further, CRTA section 119 expressly states that the CRT has no jurisdiction over libel and slander, which includes defamation. Finally, this claim was not included in the Dispute Notice, so I find it is not properly before me in any event. For all these reasons, I make no findings about any alleged defamation.
10. Second, the parties both refer to a December 2019 RTB proceeding, and Mr. Zhao provided a copy of a December 17, 2019 RTB decision. That decision concluded that Ms. Lam failed to pay rent for November 2019 on time, including after she received a valid 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. As a result, the RTB concluded that Mr. Zhao was entitled to an order of possession effective December 31, 2019. In other words, the RTB determined that Ms. Lam's tenancy had ended. The RTB decision also ordered Mr. Zhao to return the \$2,150 balance of Ms. Lam's security deposit, after deducting the applicable RTB filing fee. While Ms. Lam argues that Mr. Zhao has failed to return her security deposit, I find she has not specifically made any claim for its return in this dispute, so it is not properly before me. I also find the CRT does not have jurisdiction to enforce an RTB order. So, I make no findings about the security deposit.
11. Third, I note that the RTB has exclusive jurisdiction to grant statutory entitlements under the *Residential Tenancy Act* (RTA). While Ms. Lam alleges in the Dispute Notice that Mr. Zhao "did not comply with contracts", I find Ms. Lam's claim in this dispute does not appear to be about an alleged breach of her tenancy agreement with Mr. Zhao. Rather, she claims that due to Mr. Zhao's alleged collusion with NY, she suffered \$14,488 in lost rental income. So, I find Ms. Lam's claim is for debt or

damages, which falls within the CRT's jurisdiction. I note Ms. Lam does not address that the sublet agreements were made by CSE, a corporate entity that is separate and distinct from Ms. Lam personally, and CSE is not a party to this dispute. However, given my findings below, nothing turns on this issue. I also find that Ms. Lam's claim is limited to \$5,000 because that is all she claimed in the Dispute notice and because \$5,000 is the CRT's monetary limit for small claims matters.

## **ISSUE**

12. The issue is whether Ms. Lam is entitled to \$5,000 in damages for Mr. Zhao's alleged collusion with NY.

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, as the applicant, Ms. Lam must prove her claims on a balance of probabilities (meaning "more likely than not"). As noted, Ms. Lam did not submit any documentary evidence in support of her claims, despite having the opportunity to do so. I have read all the parties' submitted arguments and evidence but refer only to what I find is relevant to provide context for my decision.
14. The parties entered into a residential tenancy agreement on August 22, 2019. Mr. Zhao was the landlord and Ms. Lam was the tenant. Ms. Lam's tenancy began on September 1, 2019 for a fixed term ending on August 31, 2020. The tenancy agreement included a 6-page addendum signed by both parties. A handwritten term on the addendum's fifth page stated that subleases were permitted, but that Ms. Lam "should" provide Mr. Zhao with the new tenants' legal name and contact information before subleasing to anyone.
15. The parties agree that Ms. Lam initially advised Mr. Zhao that she intended to live in the house with friends from church, and that he agreed she could sublet the property according to their tenancy agreement addendum. Ms. Lam says her arrangement with friends fell through, so she found other tenants.

16. It is undisputed that Ms. Lam rented the property's upper 2 floors to 3 tenants, one of whom was NY. The August 26, 2019 tenancy agreement in evidence shows the fixed-term agreement was between CSE and NY (and the 2 other tenants, JQ and SZ), beginning on September 1, 2019. I note that the evidence shows CSE also entered into 2 other tenancy agreements for September 2019 with additional tenants renting the property's basement and garage.
17. Ms. Lam admits that she did not provide Mr. Zhao with CSE's tenants' names and contact information. She says that her tenants paid rent as required for September and October 2019. However, she says that NY failed to pay rent for November, and so Ms. Lam could not afford to pay the rent she owed Mr. Zhao, which ultimately led to her eviction.
18. Ms. Lam alleges that Mr. Zhao and NY engaged in a "deception" for NY to end their contract with CSE early by not paying rent, so that NY could contract directly with Mr. Zhao to rent the same property. While Ms. Lam did not use these words, I find she alleges that Mr. Zhao and NY conspired to get her evicted and cause her damage. This is known as the tort of conspiracy or civil conspiracy.
19. The essential elements of civil conspiracy are:
  - a. An agreement between 2 or more people,
  - b. Concerted action taken pursuant to the agreement,
  - c. If the action is lawful, there must be evidence that the conspirators intended to cause damage to the plaintiff (or, if the action is unlawful, there must be evidence the conspirators knew or ought to have known their actions would injure the plaintiff), and
  - d. The plaintiff suffered actual damage.

(see: *Bidwell v. McGregor*, 2022 BCSC 1234).
20. The main difficulty for Ms. Lam is that she has provided no details about the alleged conspiracy between Mr. Zhao and NY. She did not explain when Mr. Zhao learned

that NY was a tenant or obtained NY's contact information. She also provided no evidence that Mr. Zhao met or talked to NY at any time before NY allegedly failed to pay November's rent. She did not explain why NY was solely responsible for paying rent for all 3 tenants listed on their tenancy agreement. More importantly, Ms. Lam provided no evidence that NY in fact failed to pay November's rent. Overall, I find Ms. Lam's allegation of a conspiracy is purely speculative and unproven.

21. Further, it appears Ms. Lam's claim is out of time in any event. The *Limitation Act* (LA) applies to the CRT. Under the LA, Ms. Lam had 2 years to start a claim against Mr. Zhao from the date she discovered her loss. The running of time stopped when Ms. Lam filed her CRT application on March 31, 2022. This means that if her claim arose before March 31, 2020, her claim is out of time. Ms. Lam indicated only that she became aware of her claim in "March 2020", which suggests it was likely before March 31. Further, given NY allegedly failed to pay rent on November 1, 2019 and the RTB issued its decision on December 17, 2019 ending her tenancy, I find Ms. Lam likely discovered her claim well before March 31, 2020. Therefore, I find Ms. Lam's claim is out of time.
22. Given my conclusions above, I dismiss Ms. Lam's claims.
23. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Neither party paid any fees and neither claims dispute-related expenses.

## **ORDER**

24. I dismiss Ms. Lam's claims and this dispute.

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Kristin Gardner, Tribunal Member