



Civil Resolution Tribunal

Date Issued: December 2, 2022

File: SC-2022-002622

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thomas-Wells v. Kaur*, 2022 BCCRT 1305

B E T W E E N :

SAGE NODIN DAVID THOMAS-WELLS

APPLICANT

A N D :

SOKVINDER KAUR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a “roommate” tenancy dispute. The applicant, Sage Nodin David Thomas-Wells, rented a shared space from the respondent, Sokvinder Kaur. Mr. Thomas-Wells claims a \$381.30 security deposit refund.

2. Ms. Kaur denies Mr. Thomas-Wells' claim. She says that Mr. Thomas-Wells left her property in a damaged and unclean condition and that he is only entitled to a \$58.58 refund. Ms. Kaur says she previously tried to send Mr. Thomas-Wells this amount, but he did not accept it.
3. Both parties are 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. The *Residential Tenancy Act* (RTA) does not apply to this dispute because the Residential Tenancy Branch (RTB) refuses jurisdiction over “roommate disputes.” I therefore find the CRT has jurisdiction over this claim, as it falls within the tribunal’s small claims jurisdiction over debt and damages.

Unviewable evidence

9. Mr. Thomas-Wells submitted several documents that I was unable to view. Mr. Thomas-Wells was given an opportunity to resubmit the documents and he did so. Ms. Kaur was given an opportunity to respond to the resubmitted evidence, and she did so. Since Ms. Kaur had an opportunity to respond, I find that she has not been prejudiced. So, I have considered Mr. Thomas-Wells’ resubmitted evidence and Ms. Kaur’s response in my decision.

ISSUE

10. The issue in this dispute is whether Ms. Kaur must refund Mr. Thomas-Wells \$381.30 from the security deposit.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Thomas-Wells must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. I note that Mr. Thomas-Wells did not provide reply submissions, though he had the opportunity to do so.
12. Both parties agree that Mr. Thomas-Wells and Ms. Kaur entered a written rental agreement for a shared tenancy. Ms. Kaur says Mr. Thomas-Wells was 18 years old when he entered the contract and that he later turned 19 in January 2022. Since Mr. Thomas-Wells does not dispute this, I accept this as accurate. Since Mr. Thomas-Wells has not provided any evidence or submissions showing that he repudiated the contract under section 19(d) of the *Infants Act* after he became 19 years old, I find

that the parties had a binding contract on the terms stated in the written tenancy agreement.

13. The contract has the following relevant terms:

- a. Sections 2 and 3 say Mr. Thomas-Wells will rent a room for \$825 per month.
- b. Both section 6(1) and page 6 of the contract say Ms. Kaur and Mr. Thomas-Wells must inspect the property together and complete written inspection reports at the tenancy's beginning and end.
- c. Section 6(3) of the contract says that Ms. Kaur loses her right to claim the security deposit if she does not comply with section 24 and 36 of the RTA and Part 3 of the regulations by completing inspection reports at the tenancy's beginning and end.
- d. Section 10(2)(a) says Mr. Thomas-Wells is responsible for damage to the property other than reasonable wear and tear.

14. The contract appears to be prepared on an RTB form for use with the RTA. Although the RTA does not apply to this dispute, the contract references the RTA and the Residential Tenancy Regulations (regulations) extensively. I will weigh the contract as written, including contract terms that specifically incorporate RTA provisions and the regulations. So, since the contract specifically incorporates section 24 and section 36 of the RTA and Part 3 of the regulations by reference into section 6(3) of the contract, I find these provisions apply to the contract.

15. It is undisputed that Mr. Thomas-Wells paid Ms. Kaur a \$412.50 security deposit, which she still has. The parties agree, and I agree, that Ms. Kaur is entitled to retain \$31.20 for reimbursement of toilet paper and compost bags that she bought. Mr. Thomas-Wells claims a refund of the remaining \$381.30 security deposit balance.

16. As discussed above, section 6(3) of the contract says that Ms. Kaur loses her right to claim the security deposit if she breaches section 24 and 36 of the RTA and Part 3 of the regulations by failing to complete inspection reports at the beginning and end of

the tenancy. Mr. Thomas-Wells says he conducted an informal inspection of the property with Ms. Kaur when he moved in. However, he says that neither party completed or signed a written condition inspection report during his move in or his move out.

17. Ms. Kaur does not deny that she did not prepare written inspection reports. However, she says that she performed a video inspection of the property at both move-in and move-out instead. Further, Ms. Kaur says that Mr. Thomas-Wells agreed to this. Ms. Kaur says that she would have performed a written report instead if Mr. Thomas-Wells had not agreed to the videos. Mr. Thomas-Wells denies agreeing to video recorded inspection reports instead of a written report and Ms. Kaur has not provided the alleged video inspection reports.
18. Ms. Kaur has the onus of proving her defence that Mr. Thomas-Wells waived or modified any contractual requirements to provide written reports. In the absence of further supporting evidence, I find Mr. Thomas-Wells' denial equally as likely as Ms. Kaur's submission that he had agreed to a video inspection instead of a written inspection report. So, I find that Ms. Kaur has not established that Mr. Thomas-Wells agreed to a video inspection instead of a written inspection.
19. Ms. Kaur also argues that the contract does not require a specific format for the inspection report. However, I find the contract requires written inspection reports. I say that because regulation 19(a), referred to in the contract under Part 3 of the regulations, says the condition inspection reports must be in writing. Further, the contract's page 6 also says that the inspection reports must be in writing. So, I find that Ms. Kaur was required to prepare written condition inspection reports under section 6 of the contract. Though Ms. Kaur argues that a video recording is more accurate than a written report, I find that nothing turns on whether or not this is accurate since the contract required written reports.

20. I find that Ms. Kaur's alleged video recordings are not written inspection reports as required by the contract. By failing to prepare written reports for move-in and move-out, I find that Ms. Kaur has lost her right to claim the security deposit in accordance with section 6(3) of the contract. So, without a contractual right to the security deposit, I find that Ms. Kaur must refund the remaining \$381.30 balance of the security deposit. Given this conclusion, I find it unnecessary to determine whether Mr. Thomas-Wells caused damage that would have otherwise entitled Ms. Kaur to retain the security deposit

CRT fees, expenses and interest

21. Mr. Thomas-Wells expressly waives any claim for interest. Given section 2(d) of the *Court Order Interest Act* that says there is no pre-judgment interest if the applicant waives it in writing, I make no order for pre-judgment interest.

22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. As Mr. Thomas-Wells was successful, I allow his claim for reimbursement of \$125 in CRT fees. Mr. Thomas-Wells did not claim dispute-related expenses.

ORDERS

23. Within 30 days of the date of this order, I order Ms. Kaur to pay Mr. Thomas-Wells a total of \$506.30, broken down as follows:

- a. \$381.30 as a security deposit refund, and
- b. \$125 in CRT fees.

24. Mr. Thomas-Wells is entitled to post-judgment interest, as applicable.

25. 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.

Richard McAndrew, Tribunal Member