



# Civil Resolution Tribunal

Date Issued: December 20, 2022

File: SC-2021-003706

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gipson v. Bitner*, 2022 BCCRT 1355

BETWEEN:

LORGAN GIPSON and KIMBERLY DIETZ

**APPLICANTS**

AND:

JAIME BITNER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This is a roommate dispute. The respondent, Jaime Bitner, leased a house from a landlord. The applicant, Lorgan Gipson, used to rent a room in the house from the respondent. The applicant, Kimberly Dietz, resided with Mx. Gipson. The applicants claim a total of \$3,500: \$500 for the cost of home upkeep expenses that the applicants say were the respondent's responsibility, and \$3,000 in therapy costs and damages

for emotional grief and distress. The respondent says they are not responsible for the alleged home upkeep expenses or for the applicants' health or emotional wellbeing, so they owe nothing.

2. Mx. Gipson represents the applicants in this dispute. Mx. Bitner is self-represented.

## **JURISDICTION AND PROCEDURE**

3. These are the CRT's formal written reasons. 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.
4. 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.
5. 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.
6. 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.
7. The CRT does not generally take jurisdiction over residential tenancy disputes, because those decisions are within the jurisdiction of the Residential Tenancy Branch

(RTB). However, the RTB refuses jurisdiction over roommate disputes like this one. For that reason, I find this dispute falls within the CRT's small claims jurisdiction.

## **ISSUES**

8. The applicants initially claimed \$1,000 for veterinary bills and potential medical treatment of their pet cat, as well as \$450 for the return of a damage deposit. The applicants withdrew those claims in their submissions, so I did not address them.
9. The issues in this dispute are:
  - a. Whether the applicants incurred \$500 in home upkeep expenses on the respondent's behalf, and whether the respondent must reimburse that amount.
  - b. Whether the respondent was responsible for providing mediation and caregiving services to the applicants. If so, did the respondent fail to provide adequate services, and do they owe \$3,000 for allegedly resulting therapy costs, and emotional grief and distress damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning "more likely than not." I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
11. Mx. Gipson undisputedly rented a room from the respondent. I find the evidence does not show whether Ms. Dietz also rented a room at any point. Regardless, it is undisputed that Ms. Dietz stayed with Mx. Gipson and was, at least part of the time, an occupant of the home.

***Did the applicants provide home upkeep that was the respondent's responsibility?***

12. There was no written roommate agreement between Mx. Gipson and the respondent. The parties do not explain the room rental in detail. Having reviewed the evidence, including submitted text messages, I find the applicants stayed in a private room with a bathroom, and had access to common areas shared with other roommates including the respondent. I find text messages show the roommates shared utility bills. However, I find the evidence does not show there was a cleaning agreement or schedule for common areas. Text messages show that the roommates discussed any cleaning complaints among themselves, as they arose.
13. The applicants say the respondent was responsible for certain types of household upkeep, which they say the respondent failed to do. Specifically, the applicants had concerns about plumbing issues, roof leaks, mold on windows and baseboards, and the alleged messiness of other roommates, among others. The applicants say they ended up addressing these concerns, for which they claim a \$500 reimbursement.
14. I find the evidence before me does not show that the respondent agreed to perform any type of specific cleaning or upkeep, either in the common areas or in the applicants' private room. I find the applicants' claim is, essentially, that the respondent negligently failed to ensure certain aspects of the house were maintained.
15. To prove that the respondent was negligent, the applicants must prove that: (a) the respondent owed them a duty of care, (b) the respondent failed to meet a reasonable standard of care, (c) the applicants sustained reasonably foreseeable damage, and (d) the respondent's failure actually caused the claimed damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
16. The house's building envelope and plumbing systems were undisputedly the landlord's responsibility to repair and maintain. However, as the sole tenant under the house lease, I find the respondent owed a duty of care to the roommates, to bring any serious building envelope or plumbing issues to the landlord's attention if the roommates did not do so.

17. Although the respondent was the primary landlord contact, I find submitted text messages and witness statements by ex-roommates show that the applicants communicated directly with the landlord on several occasions about the roof leak, plumbing, and mold concerns. Further, the applicants do not refute the respondent's submissions that the landlord hired tradespersons to investigate or repair plumbing and roof issues at the house and recommended other actions to help address mold, although the applicants say the issues were not resolved to their satisfaction. I find that the respondent did not breach the required of standard of care, because I find the landlord was reasonably informed about the issues raised by the applicants, and took steps to investigate them.
18. I also find that the respondent owed the applicants no duty of care with respect to the other roommates' alleged messiness, inadequate pet care, and other alleged problems. I find the evidence does not show that there was any agreement between the roommates about pet care or common area upkeep, or that the respondent failed to clean up after themselves. The evidence also does not show that the respondent was responsible for enforcing unproven rules about other roommates' alleged messiness and upkeep responsibilities. So, I find the respondent did not breach any duty of care about house upkeep, pet care, or other similar issues.
19. Even if the respondent had failed to meet the required standard of care about house maintenance and upkeep, I find the applicants have not proven that this caused the claimed financial losses. Specifically, the applicants say they spent \$500 on upkeep, including \$100 on drain unclogging fluid. However, there is no documentary evidence before me, such as receipts, showing that the applicants purchased any cleaning supplies or incurred any expenses for household upkeep or maintenance. I dismiss the applicants' \$500 claim.

***Was the respondent responsible for providing mediation and caregiving services?***

20. Mx. Gipson undisputedly had several disagreements with roommates other than the respondent. Mx. Gipson says they felt threatened and harmed by interactions with

those roommates. However, Mx. Gipson does not name any of those roommates as respondents to this dispute.

21. The applicants say the respondent “took on” the role of mediator in disputes between the applicants and the other roommates, and also became the applicants’ caregiver. The applicants say the respondent negligently failed to provide adequate mediation and caregiving services. They say this failure worsened Mx. Gipson’s pre-existing mental and emotional difficulties, or caused new ones. The applicants claim \$3,000 in damages for the costs of therapy Mx. Gipson says was required for those new or worsened difficulties, and for emotional grief and distress.
22. I find the applicants’ submissions show only Mx. Gipson claims damages for the respondent’s alleged mediation and caregiving failures, and Ms. Dietz does not directly claim any damages for those failures. The respondent says they were not responsible for solving roommate disputes or for the applicants’ mental and emotional wellbeing.
23. For the following reasons, I find the respondent was not responsible for mediating disputes or providing caregiving to the applicants.
24. I find Mx. Gipson’s allegation that the respondent took on a mediator and caregiving role is mostly based on a text message they received from L, a roommate Mx. Gipson was having a dispute with. L wrote, “Next time please talk to Jamie. Through the email on the whiteboard. They asked us to do that.” Mx. Gipson says this shows the respondent assumed the role of mediator and caregiver.
25. It is undisputed that the respondent occasionally offered to be a point of contact for other roommates when they were having disputes, so that the roommates would not have to communicate directly with one another. I find that is consistent with L’s text message.
26. However, I find the numerous text messages in evidence show that Mx. Gipson regularly communicated directly with other roommates during disputes. I also find the evidence shows that Mx. Gipson did not regularly rely on the respondent to mediate

or resolve those disputes. Further, I find the submitted evidence does not show that the respondent agreed or chose to act as the exclusive mediator of roommate disputes, and did not commit to resolving any roommate disputes or providing any caregiving to the applicants.

27. The text messages show that Mx. Gipson sometimes wanted the respondent to become more involved in resolving their disputes with other roommates, and to take action against those roommates. However, I find nothing before me shows that the respondent had any duty to mediate roommate disputes or provide caregiving services, under a roommate agreement or other agreement with Mx. Gipson, or because of an unexplained duty of care to provide those services, or on any other basis.
28. Having found that the respondent was not responsible for mediation or caregiving, I find they were not responsible for the alleged results of not providing those things. This includes any of Mx. Gipson's allegedly new or worsened mental and emotional issues or related therapy.
29. Even if the respondent had been responsible for mediation and caregiving, and had failed to meet the required standard of care for a mediator and caregiver (which I find is unproven on the evidence before me), I still would have found that Mx. Gipson has not proven they suffered any compensable damages. Mx. Gipson submitted no documentary evidence showing that they attended or paid for therapy, or why. I also find there is no medical evidence or other similarly persuasive evidence before me showing that Mx. Gipson's roommate experiences caused or aggravated their mental and emotional difficulties. In the circumstances, I find that Mx. Gipson's subjective experiences as the respondent's roommate are not sufficient to show that the respondent's behaviour, and particularly their choice not to undertake mediation or caregiver activities, significantly contributed to a serious and prolonged mental disturbance that rose above the level of ordinary annoyances, anxieties, and fears (see *Mustapha* at paragraph 9 and *Saadati v. Moorhead*, 2017 SCC 28 at paragraph 37).

30. I note that Mx. Gipson also says that the respondent failed to add them as a tenant on the house's lease when the respondent renewed it, so Mx. Gipson was unable to tell future landlords they had "experience" as a tenant. However, I find there is no evidence showing that the respondent and landlord agreed to add Mx. Gipson to the lease, or that this resulted in any damage or loss.
31. Mx. Gipson also says that the respondent failed to enforce unspecified house rules prohibiting "hard drugs." I find the materials before me do not explain which drugs fall into that category. Further, I find that allegation is inconsistent with the roommate advertisement Mx. Gipson wrote, with the respondent's approval, that said substance use was tolerated at the house, and did not identify any use restrictions. So, I find no compensable emotional grief or distress, or therapy, reasonably resulted from the house lease or alleged house rule issues.
32. For the above reasons, I find that the respondent is not responsible for the \$3,000 in claimed damages.

### **CRT Fees and Expenses**

33. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. However, none of the parties paid any CRT fees or claimed any CRT dispute-related expenses, so I order no reimbursements.

### **ORDER**

34. I dismiss the applicants' claims, and this dispute.

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Chad McCarthy, Tribunal Member