



# Civil Resolution Tribunal

Date Issued: December 21, 2022

File: SC-2022-001366

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lopez v. Arevalo*, 2022 BCCRT 1362

BETWEEN:

JESUS LOPEZ

**APPLICANT**

AND:

MARIA CAMILA AREVALO and MARIA ALEJANDRA AREVALO

**RESPONDENTS**

AND:

JESUS LOPEZ

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This is a roommate dispute. The applicant and respondent by counterclaim, Jesus Lopez, sublet 2 rooms to the respondents, Maria Camila Arevalo and Maria Alejandra Arevalo, in a house he leased from a third party landlord. The respondents are sisters, and given the similarity of their names, I will refer to them as Maria Camila and Maria Alejandra, intending no disrespect. Maria Camila is the applicant in the counterclaim.
2. Mr. Lopez says that Maria Camila's dog damaged the hardwood floors throughout the home's basement, as well as a door, a door frame, and Mr. Lopez's "personal furniture". Mr. Lopez claims \$3,500 to replace the hardwood floors and fix or replace the damaged door, frame, and furniture.
3. Mr. Lopez also says that Maria Alejandra hosted a party at the house, and that she or her guests "manipulated" the electrical panel and valves under the bathroom sink causing oven damage and water damage. He also says Maria Alejandra failed to pay her share of utilities. Mr. Lopez claims an additional \$1,500 for oven and bathroom repairs and outstanding utilities. Mr. Lopez also claims unspecified damages against both respondents for chiropractic therapy to treat anxiety, stress, and headaches, that I infer he says the respondents caused.
4. The respondents generally deny Mr. Lopez's claims. While they both admit that Maria Camila's dog urinated on the floors, they say this did not cause permanent damage. They say the floor needed replacement in any event due to previous flooding that they were not responsible for. They also say they are not responsible for the other alleged damage or chiropractic therapy.
5. Maria Camila says she felt threatened by Mr. Lopez, and so she decided to move out on short notice for her own safety. Maria Camila counterclaims \$1,500 for rent she paid "while being evicted" and furniture items she says she left behind. Mr. Lopez denies that either respondent moved out early or left any furniture.
6. The parties are each self-represented.

## JURISDICTION AND PROCEDURE

7. 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.
8. 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 to 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 in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, 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.
9. 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.
10. 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.
11. The CRT does not generally have jurisdiction over residential tenancy disputes, which are with the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, I find the RTA does not apply here because

the RTB refuses jurisdiction over roommate disputes like this one. Therefore, I find this dispute falls within the CRT's small claims jurisdiction.

12. Mr. Lopez submits that in addition to the alleged damage caused by the dog's urine, Maria Camilo damaged his space heater and mattress, and her dog also damaged a screen door. I find it would be unfair to consider these allegations because Mr. Lopez did not refer to them in the Dispute Notice, and he does not specifically request any remedy for this alleged damage. So, I have not addressed these allegations below.

## **ISSUES**

13. The issues in this dispute are:
  - a. To what extent, if any, Maria Camila owes Mr. Lopez \$3,500 in damages for flooring and other damage her dog allegedly caused.
  - b. To what extent, if any, Maria Alejandra owes Mr. Lopez \$1,500 in damages for alleged oven damage and water damage in the bathroom.
  - c. Whether Mr. Lopez is entitled to damages for mental distress.
  - d. To what extent, if any, Mr. Lopez owes Maria Camila \$1,500 in damages for a refund of paid rent and furniture she allegedly left behind.

## **EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, the applicant Mr. Lopez must prove his claims on a balance of probabilities (meaning "more likely than not"). Maria Camila must prove her counterclaims to the same standard. I have read all of the parties' submitted evidence and arguments but refer only to what I find is relevant to explain my decision. I note that the respondents did not submit any documentary evidence or arguments in response to Mr. Lopez's claim, and Maria Camila did not provide any final reply arguments in her counterclaim, despite having the opportunity to do so.

15. Mr. Lopez submits the following background facts:
- a. Mr. Lopez sublet a furnished room on the second floor of a house to Maria Camila, starting on February 1, 2021. She paid a \$375 damage deposit and \$750 per month in rent.
  - b. Maria Camila relocated into a furnished room in the basement on June 1, 2021, for the same monthly rent. The basement's common rooms were also furnished with Mr. Lopez's furniture, and the basement was accessible to the home's other tenants, including common storage areas.
  - c. Maria Alejandra also moved into a room in the basement on June 1, 2021 and paid \$750 per month in rent. There is no evidence that Maria Alejandra paid a damage deposit.
  - d. The respondents were responsible for paying a proportionate share of utilities each month.
16. The respondents do not dispute these facts, and so I accept them as true. There is no evidence of any written agreement between any of the parties, and I find there likely was none.
17. Mr. Lopez says that Maria Camila's dog was a significant problem while she lived in the house. He provided text messages of several photos he sent Maria Camila in March and April 2021 showing her dog had urinated and defecated on the floors. He also sent her photos of dog excrement on the paths outside the home in November and December 2021, texting her to clean it up.
18. Mr. Lopez says he did not go into the basement frequently after the respondents moved into it. The parties' text messages show that on January 18, 2022, he found fresh dog urine in several locations on the basement floor, which he documented with photos. Mr. Lopez texted that the hardwood floors were "already black" due to the amount of urine. I find the photos in evidence show areas where the floor appears wet and discoloured. Mr. Lopez took photos of more fresh urine on January 21 and

22, 2022, and advised Maria Camila that due to the serious damage done, the required “clean up” would be at her expense.

19. On February 5, 2022, Mr. Lopez texted the respondents that he would be starting repairs to the basement “within the next few weeks”, and that he would be using the entire basement himself as of March 1. He requested that the respondents vacate the house by 1:00 pm on February 28, 2022. Maria Camila responded with a request that he start repairs after they move out. I note that the respondents do not take issue with the reasons or timing of Mr. Lopez’s February 5 notice to vacate by February 28.

### ***Claims against Maria Camila***

20. Mr. Lopez says that urine from Maria Camila’s dog caused damage not only to the hardwood floors, but also to a door, door frame, and bookcase. Maria Camila admits that her dog urinated on the floor but says it did not cause the floor’s deterioration. She says the floor was already “sinking” in and around the bathroom, and that a previous roommate told her the basement had completely flooded before Maria Camila started living there.
21. Maria Camila did not provide any supporting evidence of her allegation about pre-existing damage, such as a statement from the previous roommate. There is also no evidence that she notified Mr. Lopez about any “sinking” issues in the basement.
22. Mr. Lopez provided photos of the basement that he says were taken in March 2020 and January 2021, before the respondents moved in. As Maria Camila does not dispute it, I find the photos show the basement’s condition before she moved in. I find the floors appear in very good condition in the photos, with none of the staining that is apparent in the January 2022 photos referenced above.
23. Mr. Lopez provided additional photos taken on February 18, 19, and 22, 2022, which show fresh urine mess and extensive stains in several areas on the basement floor. One of the photographs shows a bookcase sitting in what appears to be a puddle of urine, and the bookcase’s bottom corner is wet and discoloured. I find the bookcase’s

condition is consistent with Maria Camilo's dog urinating repeatedly in the same location on or directly next to the bookcase. While the photos show Maria Camila placed several "pee pads" on the floor in February 2022 at Mr. Lopez's request, I find the pads were ineffective, and the dog continued to urinate on the floor.

24. I find Mr. Lopez's contemporaneous photos support his assertion that Maria Camila's dog damaged the hardwood floors and bookcase. This conclusion is further supported by a February 22, 2022 email to the SPCA written by one of the home's other tenants, CG, reporting concern for the dog's welfare. CG stated that Maria Camilo did not take the dog out often enough and the basement was left dirty, with the floor "rotten" and a "strong ammonia smell".
25. Given Maria Camila's admission that her dog urinated on the floors, and the evidence that shows it occurred regularly, I find Maria Camila is responsible for the claimed floor and bookcase damage.
26. I note that Mr. Lopez provided a video showing the bathroom door squeaked when opening and closing it, which appeared to be from the bottom of the door rubbing against the floor. I find the video is insufficient to prove Mr. Lopez's assertion that the dog's urine caused the door or its frame to warp and create the squeak. Further, Mr. Lopez provided no evidence of the cost to replace or repair the door or its frame. So, I find Mr. Lopez has not proven he is entitled to compensation for the alleged door or door frame damage.
27. So, what is the appropriate compensation for the floor and bookcase damage? It is undisputed that Mr. Lopez did not return Maria Camila's \$375 damage deposit after she moved out. She does not seek its return in her counterclaim, and I infer it is her position that retaining the damage deposit is sufficient to cover any damage her dog caused. For the following reasons, I disagree.
28. Mr. Lopez provided email evidence from BC Floors about his options to repair the damaged hardwood floors. BC Floors advised that the existing hardwood was too old to fix, and it did not have any similar replacement planks. It stated the best option was

to install new flooring in the approximately 270 square foot space. It provided estimates of \$2,900 to \$3,500 for high-end laminate, and \$4,200 to \$5,000 for hardwood flooring, plus costs for levelling the floor.

29. Maria Camila does not particularly dispute the reasonableness of these estimates and says only that she cannot afford to pay what Mr. Lopez is asking for. I accept that Mr. Lopez likely cannot repair the floor and that it needs replacement. Given the age of the existing floor, I find it is reasonable to award the lowest estimate for replacement flooring. As he did not provide any estimate for levelling, I find Mr. Lopez is entitled to \$2,900 to replace the damaged floors.
30. Mr. Lopez did not provide any information about the age or cost of the damaged bookcase. From the photos before me, it does not appear new or to be of “high-end” quality. In the absence of evidence and on a judgment basis, I find a nominal award of \$30 is appropriate compensation.
31. As for the damage deposit, I find it was an implied term of the parties’ rental agreements that the respondents would leave the residence reasonably clean when they moved out.
32. Mr. Lopez provided photos taken February 28, 2022 showing the respondents left garbage inside and outside the home, and that they did not clean the bathroom floors, bathtub, oven, or stove before they moved out. Based on the photos, I find Mr. Lopez has established the respondents failed to leave the residence reasonably clean. While Mr. Lopez did not say how much it cost to clean the respondents’ mess, from the photos I find approximately 3 hours of cleaning was likely required. On a judgment basis, I find that Mr. Lopez was entitled to keep \$75 for cleaning, which leaves a \$300 balance from the damage deposit to be applied to the new flooring.
33. In summary, I find Maria Camila must pay Mr. Lopez \$2,630 in damages for the flooring and bookcase damage ( $\$2,900 + \$30 - \$300$ ).



### ***Claims against Maria Alejandra***

34. It is undisputed that Maria Alejandra held a party for approximately 10 people on January 22, 2022. Mr. Lopez says that someone “manipulated” the electrical panel during the party, causing several power outages. He says this damaged an oven fuse, and that the oven only partly worked afterward. Mr. Lopez also says a leak developed under the bathroom sink a couple of days after the party, in the bathroom used by party guests. He says someone “manipulated” the valves, causing the leak and damage to the wooden cabinet and nearby drywall.
35. The parties’ text messages show the respondents reported pipes leaking in the downstairs washroom on January 25 and again on January 26, when Mr. Lopez eventually came to investigate. Mr. Lopez advised that the problem was the cold-water valve, which he said should not be moved unless replacing the faucet. Mr. Lopez did not suggest at the time that either respondent or a party guest must have moved the valve, and he provided no supporting evidence that the valve was intentionally or negligently moved.
36. Given the gap in time between the party and the leak, I find Mr. Lopez’s submission that Maria Alejandra or her guests were responsible for the leak is purely speculative. Further, Mr. Lopez provided no evidence about the estimated cost to repair any water damage from the leak. Overall, I find Mr. Lopez’s claim for water damage unproven.
37. Turning to the oven damage, Maria Alejandra texted Mr. Lopez that 2 burners on the stove stopped working on January 27, which was 5 days after her party. Mr. Lopez responded that he also had problems with the upstairs oven “the other day”. It is not entirely clear whether Mr. Lopez’s claim relates to the basement stove or the upstairs oven. In any event, Mr. Lopez says that he discovered the oven fuses were damaged, which he attributed to power outages that undisputedly occurred during Maria Alejandra’s party.
38. Mr. Lopez did not explain or provide any evidence to support his submission that the power outages were caused by high electricity demands during the party. He also

provided no evidence to support his allegation that Maria Alejandra or her guests “manipulated” the electrical panel or that either the alleged manipulation or the power outages caused the oven not to work, days later. Mr. Lopez provided only an email from Better Care Applicant Repair stating it would cost \$189 plus GST for a service call to diagnose the oven’s problem. I infer that Mr. Lopez has not yet had the oven repaired. Overall, I find there is insufficient evidence to establish that Maria Alejandra is responsible for any alleged oven damage.

39. Finally, I turn to Mr. Lopez’s claim for unpaid utilities. He says Maria Alejandra failed to pay utilities for January and February 2022. He provided text messages showing he advised all tenants on February 12 that utilities for January and February totaled \$88.83 each. Maria Alejandra admits she did not pay these utilities, which she says was fair because Mr. Lopez cut off the hot water for 2 to 3 weeks. She provided no supporting evidence of this allegation, which Mr. Lopez denies.
40. Overall, I find Maria Alejandra has not proven she was entitled to withhold her utilities contribution. Given she admits not paying what was undisputedly owed, I find she must pay Mr. Lopez \$88.83.

### ***Mental distress***

41. As noted, Mr. Lopez claims for chiropractic therapy to decrease symptoms of anxiety, stress, and headaches. I find this is a claim for mental distress. The BC Court of Appeal has found that there must be some evidentiary basis for awarding damages for mental distress. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253, paragraphs 48 to 49. As discussed in the non-binding but persuasive decision in *Eggbury v. Horn et al*, 2018 BCCRT 224, there must be some medical evidence to support the stress or mental distress. I agree with the reasoning in *Eggbury* and apply it here. While I acknowledge that the situation involving the respondents may have been stressful and unpleasant for Mr. Lopez, that alone is insufficient to prove damage or loss for mental distress. As Mr. Lopez did not submit any medical evidence, including any evidence that he required chiropractic therapy, I find he is not entitled to damages for this claim, and so I dismiss it.

## **Counterclaim**

42. Maria Camila alleges that on February 19, 2022, she returned home with her sister and a friend, and Mr. Lopez came into the basement and yelled that the respondents had to move out the next day. Maria Camila says she felt threatened and unsafe, so she called the police. It is undisputed the police spoke with the parties and then left.
43. Maria Camila says Mr. Lopez started removing furniture the next day and cut off the water. She says she felt forced to leave, so she put her belongings in storage and was “homeless” for a while until the respondents moved into their new home on March 1, 2022. As noted, Maria Camila did not submit any evidence, including any invoice for storage or short-term accommodation costs. She also did not describe any furniture she allegedly left behind.
44. In CG’s February 22, 2022 email to the SPCA, they provided details about times that Maria Camila came and left the residence on February 20 and 21. Mr. Lopez also provided surveillance footage showing the SPCA apprehending Maria Camila’s dog at the residence on February 24, which Maria Camila submits was voluntary. Based on this evidence, I find Maria Camila was still living in the residence as of February 24. Overall, I find Maria Camila’s claim that she moved out early, incurred storage costs, or left furniture behind is unsubstantiated. I accept Mr. Lopez’s submission that the respondents moved out as planned on February 28, 2022. So, I dismiss Maria Camila’s counterclaim.
45. The *Court Order Interest Act* applies to the CRT. However, Mr. Lopez expressly stated that he did not want to claim interest. Therefore, I make no order for interest.
46. 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. I find Mr. Lopez was partly successful against both respondents, and so he is entitled to half his paid CRT fees, which is \$87.50. I find the respondents are jointly and severally responsible to pay these fees.

47. As Maria Camila was unsuccessful in her counterclaim, I find she is not entitled to any reimbursement. None of the parties claimed any dispute related expenses.

## **ORDERS**

48. Within 30 days of the date of this decision, I order Maria Camila to pay Mr. Lopez \$2,630 in damages for the flooring and bookcase damage.

49. Within 30 days of the date of this decision, I order Maria Alejandra to pay Mr. Lopez \$88.83 in debt for outstanding utilities.

50. Within 30 days of the date of this decision, I order Maria Camila and Maria Alejandra to pay Mr. Lopez a total of \$87.50 in CRT fees.

51. Mr. Lopez is entitled to post-judgment interest, as applicable.

52. I dismiss Maria Camila's counterclaim and the remainder of Mr. Lopez's claims.

53. 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.

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Kristin Gardner, Tribunal Member