



Civil Resolution Tribunal

Date Issued: January 13, 2023

File: SC-2022-002532

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *AF v. DL*, 2023 BCCRT 38

BETWEEN:

AF

APPLICANT

AND:

DL and PL

RESPONDENTS

AND:

AF

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute between family members who shared living accommodations. The applicant and respondent by counterclaim is AF. In August 2017, AF moved in with the respondents DL and PL. DL is AF's sister.
2. AF says that in April 2020 DL and PL evicted him with no notice. He claims \$4,716.49, broken down as \$231.40 for moving costs, \$3,200 for increased rent he had to allegedly pay in his new accommodations, \$250 for unused rent, and \$1,035 for allegedly lost or damaged belongings. AF represents himself.
3. DL and PL say the claim should be dismissed. They say the eviction was justified because AF spat on their son and verbally assaulted them, so AF is not entitled to any rent refund or moving costs. DL and PL deny damaging or losing any of AF's belongings and say after the eviction he moved in with his mother and has not paid any rent. DL counterclaims \$360 for dump fees and cleaning costs plus \$100 for a missing battery charger.
4. In the published decision, I anonymized the parties' names to protect the identity of a minor child.

JURISDICTION and PROCEDURE

5. 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.
6. 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.

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.
9. The CRT generally does not have jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the director of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTA does not apply to accommodation in which a tenant shares kitchen or bathroom facilities with an owner. It is undisputed that DL and PL own their home and that the parties shared a kitchen. So, I find that the RTA does not apply, and this dispute is within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.
10. DL requested that a witness statement from AF's mother, PH, be "removed from this case" because it contained personal information about DL's adult son, JL, and had "nothing to do with this case." I interpret the request as a request for me to disregard the information about JL. However, PH's statement contained relevant contextual information about events involving JL and the parties leading up to the eviction, so I have admitted the statement as evidence.

ISSUES

11. The issues in this dispute are:
 - a. Did AF or DL and PL first breach the contract? If DL and PL, what are AF's proven damages?

- b. Is any party entitled to compensation for lost or damaged property?
- c. Is DL entitled to compensation for cleaning costs?

EVIDENCE and ANALYSIS

12. As the applicant in this civil proceeding, AF must prove his claims on a balance of probabilities, meaning more likely than not. DL must prove her counterclaims to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. In August 2017, AF and his infant son moved in with DL and PL. AF did not pay a damage deposit. AF paid DL and PL \$400 per month, and then \$500 per month for March and April 2020. DL and PL deny that these payments were rent and say they were contributions to household expenses. However, based on the undisputed consistent monthly payments AF made, I find the parties had an agreement that AF could rent the room on a month-to-month basis, despite the absence of a formal tenancy contract. Given that AF stayed there almost 3 years, I find it was an implied term of the parties' agreement that either party would give the other reasonable notice before ending the agreement. I return to the notice period below.

Eviction and contract breach

14. It is undisputed that DL and PL evicted AF on April 12, 2020. DL and PL say they made the decision for the safety of their family and home. I find they argue that AF's conduct breached an implied contractual term of reasonable safety in the home and allowed them to evict AF without notice.
15. The parties disagree about what happened on April 12. In brief, there was a physical altercation between AF and DL's adult son, JL, who had moved into the home in December 2019. AF called the police. DL told the police she no longer wanted AF in her home, and he was given a few minutes to pack some essential belongings. There is no police report in evidence.

16. AF says JL spat on and punched him after overhearing a telephone conversation between AF and AF's mother in which AF was critical of JL's lifestyle. In contrast, DL and JL say AF spat on JL first and JL then pushed AF in retaliation. However, in text messages shortly after the incident, DL said JL "hit" and "decked" AF. I find hitting or decking someone is different from pushing them, so I find DL's recollection of the incident is not reliable. Thus, I find it equally likely that JL attacked AF as AF says. I find it unproven that AF spat first, or intentionally.
17. As for verbal abuse, DL and PL do not articulate exactly what AF said on April 12 that was abusive. I find the parties were involved in an argument but there is no evidence that AF said anything that rose to the level of breaching the rental agreement. Overall, I find DL and PL have not established that AF's conduct during the incident or at any time before that justified eviction without notice.
18. As noted above, I find reasonable notice was an implied term of the parties' agreement. The parties do not say what a reasonable notice period was here. In the circumstances of the month-to-month, informal agreement, I find 1 month was reasonable notice. I find DL and PL breached the agreement when they failed to give 1 month's notice before ending it.
19. AF says he rented a 2-bedroom apartment with a 6-month term starting May 1, 2020. Although DL and PL say AF moved in with his mother and did not pay rent, AF denies this. AF provided a signed copy of the tenancy agreement, so I accept that AF rented and lived in the apartment for 6 months.
20. AF does not claim any rent expenses for April 12 to April 30. He claims a refund of \$250, amended in submissions to \$300, for the portion of April's rent he did not "use." He also says he should be compensated for 12 months of the difference in rent between the \$1,300 he paid for his new apartment (or would have paid if the lease were longer) and the \$500 he was paying DL and PL. AF also claims moving expenses of \$231.49 for a truck rental and labour of a moving helper, PA.

21. Damages for ending a rental agreement early do not necessarily include a refund of “unused” rent. The general rule in assessing damages for breach of contract is that the non-breaching party, in this case AF, should be put in the position they would have been in had the contract been performed. As noted above, AF had a month-to-month and not a fixed term agreement. If DL and PL gave 1 full month’s notice on April 12, 2020, then AF would have had the rest of April and May to find a new place to live. He would have paid May’s \$500 rent to DL and PL, and June’s rent somewhere else. So, I find his damages are equivalent to one month of the difference between \$500 and the market rate for similar accommodation.
22. What was the market rate? AF says he found an apartment at a “very reasonable” price. However, he also says that when he was evicted he was already in the process of finding a better living situation for him and his son. I find it obvious that renting a 2-bedroom apartment is generally more expensive than sharing accommodations in a home. The parties did not provide objective evidence about market rates for bedrooms with shared living space. However, DL and PL said they could have rented AF’s room for \$900. I find that rate reasonable, and the only evidence of market rates. So, I find AF’s damages are \$400 (\$900-\$500), representing what he would have saved on May’s rent had he been given 1 month’s notice. To be clear, I find AF is not entitled to any refund of April’s rent.
23. As for moving expenses, AF has not established that his moving expenses were incurred because of the failure to give 1 month’s notice. I find he would have incurred moving expenses when he moved his belongings whether or not he had 1-month’s notice, so I dismiss that aspect of his claim.

AF’s claim for missing and damaged property

24. It is undisputed that AF returned to the home on April 26, 2020 to retrieve his belongings at an arranged time. DL and PL say they respectfully placed AF’s belongings on a tarp the same day he retrieved them, as instructed by police. In contrast, AF says his belongings were carelessly piled on the front lawn and many items were damaged.

25. I find the law of bailment applies here. A bailment is a temporary transfer of personal property for safekeeping to another person, known as the bailee. A bailee may be liable for loss or damage to the property in their safekeeping, so long as they voluntarily accept responsibility for the property (see *Litchi v. Landmark Transport Inc. et al*, 2006 BCSC 344). Here, I find that DL and PL evicted AF without notice and without sufficient time to pack and move his belongings. As a result, I find that they voluntarily accepted responsibility for AF's belongings for a reasonable period of time until he could collect them.
26. The standard of care for a bailee is reasonable care in all the circumstances. This is sometimes expressed as the same care one would take with one's own possessions (see *Harris v. Maltman and KBM Autoworks*, 2017 BCPC 273).
27. The parties submitted several photos of AF's belongings on the lawn. I find that the belongings were generally stacked neatly, on a tarp, in boxes and bins with the exception of items that could not be packed into boxes. The belongings appear to be enough to fill a small moving van.
28. AF claims \$565 for damaged property, including a broken printer and desk lamp, ripped mattress, scratched desk, and children's toys missing pieces. DL and PL deny damaging any items and say the items were damaged before AF moved in or while he was living there. Based on the photos and DL and PL' submissions, I find DL and PL took reasonable care to pack and place the items on the lawn. I find it unlikely that any of the items were damaged in the process of being moved onto the lawn or otherwise in the short time they were in DL and PL' possession. I dismiss this aspect of AF's claim.
29. Next, in his submissions AF says he had \$500 cash in his desk drawer for the next month's rent. This was not part of his original claim. DL and PL deny taking the cash and say there is no way AF would have forgotten to take money when he was evicted. Ultimately, I find AF has not proven this aspect of his claim and I dismiss it.

30. Next, AF claims \$250 for spoiled food from the fridge and freezer. It is undisputed that DL and PL tried to give AF some boxes of food when he retrieved his belongings, but he refused to take them. DL and PL say the food was kept cold until AF was loading his last few items, which is generally consistent with the evidence of AF's witness PA, who helped with the move. As well, AF returned shortly after the eviction, with his mother, to grab some belongings, and it is not clear why he was unable to retrieve any food that might have spoiled right away. So, I find DL and PL are not responsible for the spoiled food and I dismiss this aspect of his claim.
31. Finally, AF claims \$420 for items he says were not made available for him to retrieve. The items are mostly children's toys but also include printer paper, a garden hose, and a power cable. DL and PL deny keeping most of the items. The "exersaucer" and highchair they say belonged to them and because AF's child had outgrown them and stopped using them, they donated them. I find AF is not entitled to compensation for those 2 items because he has not proven ownership of them. DL and PL acknowledge they did not return printer paper they say was worth \$2 that AF bought to use with their printer because his printer did not work. Given AF does not dispute this arrangement find no compensation is warranted for printer paper. DL and PL say they never saw AF's garden hose and already owned 2. I find it unlikely that DL and PL would keep children's used toys or any of the other used, low-value items. I dismiss AF's claim for missing property.

DL and PL' counterclaim

32. In the counterclaim, DL and PL claims \$100 for carpet cleaning, \$200 for mould clean-up and removal, \$60 in dump fees, and \$100 for a missing battery charger.
33. Photos show mould on the walls after AF's belongings were removed, and a visibly dirty or stained carpet. AF says before he moved in the carpet was dirty and there was evidence of mould. I find nothing turns on this. Because of the circumstances of AF's eviction, he did not have the opportunity to clean the room or do a walkthrough inspection with DL and PL. So, I find AF is not responsible for DL and PL' cleaning costs. As well, DL and PL did not provide any receipts or invoices to substantiate the

claimed carpet and mould cleaning expenses. So, I dismiss those aspects of their claim.

34. DL and PL say they had to take AF's dresser to the dump because he took only the drawers to be spiteful. Photos confirm that the dresser was there for AF to take with the rest of his belongings. DL and PL say when he refused to take the dresser, they asked for the drawers back so the dresser would not be useless, but AF's response was to make a rude gesture. AF does not dispute this. I accept that DL and PL were stuck with a useless dresser and had to dispose of it. I allow the claimed \$60 for dump fees, which I find reasonable although not supported by a receipt.
35. As for the missing lawnmower battery charger, DL and PL say they saw AF using it on his car at some point. AF denies taking the battery charger, or being aware of its existence before this dispute. Ultimately I find it unproven that AF took the charger. DL and PL also provided no objective evidence of the charger's value. I dismiss this aspect of the claim.
36. DL and PL submitted a credit card statement that they say shows the purchase of a new deadbolt for the house. They did not specifically claim reimbursement of this expense in their Dispute Notice or in submissions, but if they had, I would not order reimbursement as they did not demonstrate that it was necessary.

Summary, interest, CRT fees and expenses

37. I have found that AF is entitled to \$400 in damages for the contract breach. I have also found that DL and PL are entitled to \$60 for dump fees. The net result is that AF is entitled to \$340.
38. The *Court Order Interest Act* applies to the CRT. AF is entitled to pre-judgment interest on the \$340 from the April 12, 2020 eviction date to the date of this decision. This equals \$7.55.
39. 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. AF did not pay any CRT fees. DL and PL paid \$125 in CRT fees. The parties had mixed success, so I find fees should be split equally. I order AF to reimburse DL and PL \$62.50. Neither party claimed any dispute-related expenses.

ORDERS

40. Within 14 days of the date of this order, I order DL and PL to pay AF a total of \$285.05, broken down as \$340.00 in damages and \$7.55 in pre-judgment interest under the *Court Order Interest Act*, less \$62.50 in CRT fees.
41. AF is entitled to post-judgment interest, as applicable.
42. I dismiss the balance of the parties' respective claims.
43. 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.

Micah Carmody, Tribunal Member