



Civil Resolution Tribunal

Date Issued: January 25, 2023

File: SC-2022-001957

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cletheroe v. Paquet*, 2023 BCCRT 66

BETWEEN:

SHARON CLETHEROE

APPLICANT

AND:

GAYLENE PAQUET

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a roommate dispute. The applicant, Sharon Cletheroe, rented a room from the respondent, Gaylene Paquet, in a manufactured home for about 7 months. Ms. Paquet undisputedly gave Ms. Cletheroe an eviction notice for February 28, 2022, but then allowed her to stay into March. The parties also do not dispute there was an incident between them on March 9, 2022, after which Ms. Cletheroe left the home.

Ms. Cletheroe says Ms. Paquet refused to refund her March rent, for which she claims \$1,000. Ms. Cletheroe also claims \$3,000 in moving expenses for her move to Alberta to find affordable accommodation. Ms. Cletheroe is represented by her son, RS.

2. Ms. Paquet says she kept Ms. Cletheroe's March rent to pay for damage Ms. Cletheroe allegedly caused to her property. Ms. Paquet says it was RS's choice to move his mother to Alberta, not hers. So, she says she owes Ms. Cletheroe nothing. Ms. Paquet is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
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. In some respects, both parties of 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 *Yas v. Pope*, 2018 BCSC 282, 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.
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. Even though this dispute relates to a manufactured home, I find the *Manufactured Home Park Tenancy Act* (MHPTA) does not apply. This is because the MHPTA does not apply when a person rents part of a manufactured home out to another person. I also find the *Residential Tenancy Act* (RTA) does not apply because this is a dispute between roommates. In particular, section 4(c) of the RTA says it does not apply to accommodations in which a tenant shares bathroom or kitchen facilities with the owner. It is undisputed that the parties shared a kitchen. So, I find this is a contractual roommate dispute within the CRT's small claims jurisdiction over debt and damages.

Preliminary issues

8. Ms. Paquet objects to an unsigned written statement submitted by Ms. Cletheroe that was allegedly made by a witness to the March 9, 2022 incident. Ms. Paquet alleges the statement was not made by the witness. Ms. Paquet also submitted a signed statement she says is from the same witness. In the signed statement, the witness does not deny making the statement Ms. Paquet objects to. Considering the seriousness of Ms. Paquet's allegation, I would have expected her to provide supporting evidence from the witness, such as a recorded conversation or written testimony, denying she wrote the statement submitted by Ms. Cletheroe. Ms. Paquet did not do this. In the absence of such supporting evidence and given the CRT's flexible mandate, I allow the unsigned witness statement, though given my findings below, nothing turns on it.
9. Ms. Cletheroe also submitted what she says is a "video" recording in evidence. It appears the recording is of RS's attendance at Ms. Paquet's home in March 2022 to collect his mother's belongings. However, the recording is sound only, with no images. I declined to ask Ms. Cletheroe for a copy of the recording with images if available because on review of the audio, I was satisfied the evidence was not relevant to her claims.

10. In her later submissions, Ms. Cletheroe appears to improperly disclose confidential settlement discussions that occurred during the CRT's facilitation process, contrary to CRTA section 89 and the CRT's rules. While Ms. Paquet did not expressly object to Ms. Cletheroe having done so, there is no evidence she consented either. So, I have not relied on those particular comments.

ISSUES

11. The issues in this dispute are:

- a. Was Ms. Paquet entitled to retain all or part of Ms. Cletheroe's March 2022 rent to cover damage she says Ms. Cletheroe caused to her property?
- b. Is Ms. Cletheroe entitled to moving expenses?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Ms. Cletheroe must prove her claims on a balance of probabilities. 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. Ms. Cletheroe did not provide final reply submissions despite having the opportunity to do so.

13. It is undisputed the parties had a month-to-month verbal rental agreement under which Ms. Cletheroe paid Ms. Paquet \$1,000 a month for room and board. Based on the limited evidence before me, I find there are no other explicit contractual terms to which the parties agreed. I find it was an implied term of the agreement that either party had to give the other reasonable notice to end it. I find in the circumstances of a month-to-month agreement, reasonable notice was 1 month.

14. As noted above, there was an incident between the parties on March 9, 2022 and Ms. Cletheroe left the home. Ms. Paquet does not deny she evicted Ms. Cletheroe on March 9, 2022 or that Ms. Cletheroe was entitled to a refund of her rent from March

10, 2022 to the end of the month. Instead, Ms. Paquet says “rent was kept in lieu of damages” she alleges Ms. Cletheroe caused to her property.

15. Ms. Cletheroe does not explain why she claims a refund of her entire \$1,000 March rent when she undisputedly stayed in Ms. Cletheroe’s home until March 9, 2022. In the circumstances, I find Ms. Cletheroe is entitled to a partial refund of her rent from March 10, 2022 to the end of the month, which amounts to \$700 based on an average 30-day month, subject to any deductions for property damage discussed below.
16. Ms. Paquet alleges Ms. Cletheroe damaged her furniture, walls, mattress, carpets and cooktop stove, and took a mattress cover that belonged to Ms. Paquet. She also says Ms. Cletheroe melted some new placemats and left a burn mark on her counter. Ms. Paquet did not file a counterclaim so I infer she seeks a set-off against Ms. Cletheroe’s award. A set-off may be appropriate where there is a sufficient connection between the set-off request and the award granted to the applicant and where the set-off amounts are proven. I find there is the required sufficient connection between the rent award and the alleged property damage.
17. However, I find Ms. Paquet has not proven the set-off amount, which as the party alleging the property damage, she bears the burden of proving. Ms. Paquet provided a witness statement from her friend describing the damage she says Ms. Cletheroe caused. I place little weight on this evidence as I find the witness was unlikely to be independent or neutral. Also, Ms. Paquet did not provide pictures of any damage or of the property before Ms. Cletheroe moved in. Although Ms. Paquet said she paid for carpet and mattress cleaning and “sanitization”, she did not provide a breakdown of the cost to fix the damage or any receipts. So, I find it unproven Ms. Cletheroe caused property damage and I do not allow any set-off.
18. Next, I turn to Ms. Cletheroe’s \$3,000 claim for moving expenses. I note Ms. Cletheroe initially included \$1,388.32 in moving expenses in her claim for dispute-related fees and expenses, but later amended her Dispute Notice to add them as a separate claim. In submissions, RS says he looked for new accommodation for his mother for a month during which time she stayed with him but was unable to find

anything in her budget. RS says he was finally able to find accommodation in Alberta but incurred \$3,000 in expenses to move his mother there. For the following reasons, I find this claim cannot succeed.

19. First, Ms. Cletheroe did not provide evidence there was no suitable accommodation available locally within her budget, such as rental ads or objective information about the local rental market. So, she has not proven she had to incur the claimed moving expenses.
20. Second, since Ms. Cletheroe undisputedly stayed with RS for a month after she was evicted, there is no evidence the moving expenses arose from the March 9, 2022 eviction. That is, even if Ms. Paquet had given Ms. Cletheroe the required 1 month notice, Ms. Cletheroe would have incurred the moving expenses because the evidence shows they only arose a month after the eviction. So, I find the moving expenses were not incurred because of Ms. Paquet's failure to give proper notice.
21. Third, although Ms. Cletheroe claims \$3,000, the bank statements in evidence only indicate claimed expenses that total \$1,200.89. Ms. Cletheroe did not provide receipts for any other moving expenses.
22. Fourth and finally, the bank statements are in RS's name, not in Ms. Cletheroe's, so I find Ms. Cletheroe has not proven she was the person who incurred the expenses. RS is not a party to this dispute, so he is not entitled to seek reimbursement for any expenses he may have incurred on his mother's behalf. If RS were a party to this dispute, I would not allow his claim for moving expenses in any event. This is because I find RS does not have standing (the legal right) to bring a claim about an agreement he was not party to.
23. So, I dismiss Ms. Cletheroe's claim for moving expenses.
24. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Cletheroe is entitled to pre-judgment interest on the \$700 debt award from March 10, 2022, the day after her eviction, to the date of this decision. This equals \$9.11.

25. 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. However, Ms. Cletheroe did not pay CRT fees, so I make no order for fees. Ms. Cletheroe did not claim dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order Ms. Paquet to pay Ms. Cletheroe a total of \$709.11, broken down as follows:

- a. \$700 in debt for reimbursement for rent paid, and
- b. \$9.11 in pre-judgment interest under the COIA.

27. Ms. Cletheroe is entitled to post-judgment interest, as applicable.

28. I dismiss the rest of Ms. Cletheroe's claims.

29. 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.

Megan Stewart, Tribunal Member