



Civil Resolution Tribunal

Date Issued: February 6, 2023

File: SC-2022-003782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anderson v. Kuzmick*, 2023 BCCRT 106

BETWEEN:

TAMMY ANDERSON

APPLICANT

AND:

MICHAEL KUZMICK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Tammy Anderson, rented a room in a house owned by the respondent, Michael Kuzmick. Mr. Kuzmick evicted Ms. Anderson after less than a month, saying they broke the rules.

2. Ms. Anderson denies breaking any rules and says Mr. Kuzmick improperly evicted them without notice. Ms. Anderson claims \$2,925, including a refund of the \$650 rent they paid, their \$325 damage deposit. their \$450 pet deposit, and other damages.
3. Mr. Kuzmick says Ms. Anderson is not entitled to any rent refund because they broke rules they agreed to follow. He also says Ms. Anderson is not entitled to their deposits back because they damaged the room. Each party is 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 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. Mr. Kuzmick undisputedly owned the home. Although it is not entirely clear from the evidence and submissions, I find it likely that the parties shared a kitchen or bathroom. Neither party says CRT should not resolve this dispute, and Ms. Anderson mentioned in a text message that they would apply to the RTB, so I infer that the RTB declined jurisdiction. I find this dispute is within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.

ISSUES

9. The issues in this dispute are:
 - a. Did Ms. Anderson breach the rental agreement by breaking rules, or did Mr. Kuzmick breach the rental agreement by evicting with little notice?
 - b. Is Ms. Anderson entitled to a refund of June's rent, their damage deposit, their pet damage, or other damages?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Anderson must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. Ms. Anderson moved into the room in late May, 2022. If there was a written tenancy agreement, neither party provided it. However, at some point Ms. Anderson signed a "Crime Free Housing Addendum" (addendum), which set out the house rules. Ms. Anderson does not dispute that the addendum formed part of the parties' tenancy agreement, and I find that it did. The courts have held that "fresh consideration"

(something of value exchanged for a promise) is not required to enforce a change in an agreement (see *Rosas v. Toca*, 2018 BCCA 191)

12. The addendum prohibited certain conduct, including smoking indoors, criminal activity, assault, threatened assault, loss of peace and tranquility. It said no visitors after 10 pm except one overnight guest on weekends. It required Ms. Anderson to clean up after themselves in common areas and not to cook after 11 pm. It required Ms. Anderson to close and lock doors and windows and keep lights off when not in use. Finally, it said pets required a non-returnable \$200 deposit.
13. Both parties provided copies of their text message history. Trouble started on June 3 when Ms. Anderson's family member parked a van in the driveway overnight. Mr. Kuzmick said this violated the addendum so Ms. Anderson was "out". The addendum did not say anything about parking.
14. On June 5, the parties had an argument and Ms. Anderson's dog "barely grazed," as Mr. Kuzmick puts it, his arm. Police were called, and Mr. Kuzmick confirmed by text that Ms. Anderson had 2 days to move out. Over the next few days, further discussions ensued, and Mr. Kuzmick at one point agreed that Ms. Anderson could stay until the end of June. But on June 13, Mr. Kuzmick once again said Ms. Anderson had to move out by noon on June 17 at the latest, which they did. So, I find Mr. Kuzmick ended the rental agreement with 4 days' notice, effective June 17.
15. Mr. Kuzmick says Ms. Anderson was not asked to leave because of one particular incident but several "concerning issues", which he says he is willing to explain, but does not explain.
16. The addendum said violation of any of the rules was "good cause for a notice to end a tenancy." Confusingly, it also said "a single violation after (3) strikes it will be up to the landlord's discretion of notice to end tenancy, therefore forfeiting security deposit and rent paid." I find the addendum is ambiguous about whether the tenant was entitled to 3 warnings. I find the principle of *contra proferentem* applies, which means ambiguous contract terms should be construed against the person who drafted the

contract. Applying that principle, I find Ms. Anderson was entitled to 3 warnings before Mr. Kuzmick could end the tenancy for rule violations, unless the rule violation was so serious that it justified immediate termination, such as a serious assault or criminal activity, which is not alleged here.

17. As the party relying on rule breaches to end the tenancy, Mr. Kuzmick must prove the 3 rule breaches and warnings. I find he has not done so. I have reviewed all the parties' text messages. While Mr. Kuzmick was clearly frustrated with Ms. Anderson at times, the only rule breach proved is that Ms. Anderson once left their bedroom light on. Ms. Anderson disputed that they ever smoked indoors, or had overnight guests other than on weekends as permitted. I find the single incident of leaving a light on did not give Mr. Kuzmick the right to evict Ms. Anderson without notice under the addendum or otherwise.
18. Without that right, I find Mr. Kuzmick was required to give Ms. Anderson reasonable notice before evicting them. The CRT has implied reasonable notice terms of 1 month in similar agreements in decisions such as *Phillips v. Roberts*, 2021 BCCRT 109, which are not binding on me but with which I agree. I find it is appropriate to imply a 1 month notice term here. I find that by giving Ms. Anderson only 4 days' notice to move out, Mr. Kuzmick breached the parties' agreement.
19. So, what are Ms. Anderson's damages? Ms. Anderson says after the eviction they moved in with family. There is no evidence they incurred any costs for temporary accommodation. In the circumstances, I find Ms. Anderson is entitled to a refund of the remaining portion of June's \$650 rent, which I calculate as \$282, based on 13 of 30 days remaining. I find Ms. Anderson is not entitled to any compensation for rent or deposits they may have to pay elsewhere, which they did not prove in any event.

Damage deposit and pet deposit

20. As the party seeking to retain the \$325 damage deposit, Mr. Kuzmick must prove that Ms. Anderson damaged his property. Mr. Kuzmick does not say what was damaged, but he provided photos showing a dirty mattress and small holes in a wall. In texts,

Ms. Anderson denies damaging the mattress and putting holes in the wall. Given that Mr. Kuzmick did not provide photos documenting the room's condition before he rented it to Ms. Anderson and did not inspect the room with Ms. Anderson before or after the tenancy, I find he has not proved that Ms. Anderson caused any damage in their short stay. I find Ms. Anderson is entitled to a full refund of their \$325 damage deposit.

21. Ms. Anderson paid a \$450 pet deposit for their dog and kitten. As noted, the addendum said \$200 was not returnable. I find this term was clear and binding. However, as Mr. Kuzmick has not proven any pet damage, I find Ms. Anderson is entitled to a \$250 pet deposit refund.
22. In total, I find Mr. Kuzmick must pay Ms. Anderson \$857.
23. In the Dispute Notice, Ms. Anderson said they did not want to claim interest. Given section 2(d) of the *Court Order Interest Act* that says there is no pre-judgment interest if the creditor waives it in writing, I make no order for pre-judgment interest. Neither party paid CRT fees or claimed dispute-related expenses, so I do not award any.

ORDERS

24. Within 14 days of the date of this order, I order Mr. Kuzmick to pay Ms. Anderson a total of \$857 in debt. I dismiss the balance of Ms. Anderson's claim.
25. Ms. Anderson is entitled to post-judgment interest, as applicable.
26. 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

