



# Civil Resolution Tribunal

Date Issued: February 27, 2023

File: SC-2022-004011

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ogryzlo v. McNaught*, 2023 BCCRT 163

B E T W E E N :

TODD WALTER OGRYZLO

**APPLICANT**

A N D :

CAMERON MCNAUGHT

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. The applicant, Todd Walter Ogryzlo, says the respondent, Cameron McNaught, rented a room in his home for a fixed-term between October 1, 2021 and October 31, 2021 and then refused to move out. Mr. Ogryzlo says Mr. McNaught is responsible for his share of the utility bills from November 2021 to July 2022, which Mr. Ogryzlo says Mr. McNaught has not paid in full. Mr. Ogryzlo claims \$157.45 for the allegedly

unpaid utilities. Mr. Ogryzlo also claims \$707 he says he lost for a cancelled Airbnb booking when Mr. McNaught refused to move out.

2. In his Dispute Response filed at the outset of this proceeding, Mr. McNaught says that he is a legal tenant under the *Residential Tenancy Act* (RTA). I infer Mr. McNaught argues the Civil Resolution Tribunal (CRT) does not have jurisdiction to decide Mr. Ogryzlo's claims as a result. In any event, Mr. McNaught says he has paid his rent in full and denies he owes Mr. Ogryzlo anything further.
3. As described in more detail below, Mr. McNaught did not provide any evidence or submissions beyond the Dispute Response, despite having the opportunity to do so.
4. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

5. 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.
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 case manager assigned to this dispute advised the parties to address in their written submissions their position about whether the CRT has jurisdiction to decide this dispute. As mentioned above, Mr. McNaught did not provide any evidence or submissions beyond what he wrote in the Dispute Response. CRT staff followed up several times, including by phone, and gave Mr. McNaught several extensions. I find that Mr. McNaught had a reasonable opportunity to provide evidence and submissions and chose not to do so.
10. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the RTA. However, RTA section 4(c) says the RTA does not apply to living accommodations where the homeowner shares a bathroom or kitchen with the tenant. Similarly, RTA section 4(e) says the RTA does not apply to vacation or travel accommodations.
11. I find the evidence shows that Mr. Ogryzlo owned the property and shared a kitchen and bathroom with Mr. McNaught. For example, the evidence includes several videos which show Mr. Ogryzlo using the property's bathroom and kitchen, as well as other areas in the house. Notably, Mr. McNaught does not deny that he shared a bathroom and kitchen with Mr. Ogryzlo. Further, as discussed below, Mr. McNaught originally booked a stay in Mr. Ogryzlo's home through Airbnb from August 1 to September 8, 2021. I find this portion of Mr. McNaught's stay fell under the vacation or travel accommodation exception under RTA section 4(e). So, I find the RTA does not apply and this dispute is within the CRT's small claims jurisdiction over debt and damages.

## **ISSUE**

12. The issue in this dispute is whether Mr. McNaught owes Mr. Ogryzlo for unpaid utilities and the cancelled Airbnb booking.

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, Mr. Ogryzlo as the applicant must prove his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision. As noted above, Mr. McNaught did not provide any documentary evidence or written argument, despite having the opportunity to do so.

### ***Background***

14. The evidence shows as follows. Mr. McNaught originally booked an Airbnb stay in a room in Mr. Ogryzlo’s house from August 1 to September 8, 2021. Mr. Ogryzlo says Mr. McNaught approached him on September 6 and said he had no place to live after September 8. Mr. Ogryzlo says he told Mr. McNaught that the house was booked up, but Mr. McNaught could rent his personal camper van and a room in the house could open up in October. None of this is disputed.
15. On September 15, 2021, Mr. Ogryzlo sent a WhatsApp message to Mr. McNaught telling him that the “Mountain View” room in his house was available starting October 1. Mr. McNaught replied that he would take it. Mr. Ogryzlo said he usually gets “\$800 all in” but for Mr. McNaught, it would be \$700. He then told Mr. McNaught that he would send him a rental agreement.
16. The evidence includes a fixed-term roommate rental agreement between Mr. Ogryzlo and Mr. McNaught for October 1, 2021 to October 31, 2021 (October agreement). More on the October agreement below.
17. On October 9, 2021, Mr. Ogryzlo messaged Mr. McNaught and said there would be no roommate rental agreement after October and that Mr. McNaught would have to

book through Airbnb. Mr. McNaught replied that he would prefer to “stay on a monthly”. On October 12, 2021, Mr. Ogryzlo reiterated that he would not be offering Mr. McNaught a position as a roommate in the house. After some back and forth, Mr. McNaught said he had already noted he wanted to continue living at Mr. Ogryzlo’s property, so the fixed-term would roll-over to a month-to-month tenancy under the RTA. Mr. Ogryzlo disagreed and said the RTA did not apply because they were roommates.

18. At some point in October 2021, Mr. McNaught made an application to the RTB. The RTB documents are not before me. After Mr. McNaught undisputedly cancelled the RTB hearing, Mr. Ogryzlo messaged Mr. McNaught on November 2, 2021 and said that he could not stay at Mr. Ogryzlo’s house without a signed rental agreement and asked him to leave by the next day. After some back and forth, Mr. Ogryzlo told Mr. McNaught that he would honour their “original agreement” and assumed that Mr. McNaught had signed the rental agreement for November since he refused to leave. He told Mr. McNaught that he would not be offering him a roommate rental agreement for December. There is no rental agreement for November in evidence.
19. It is undisputed that Mr. McNaught did not reschedule the RTB hearing or vacate the property at the end of November 2021. The evidence shows Mr. McNaught paid Mr. Ogryzlo \$680 for November 2021’s rent and \$700 a month since then until at least July 2022.

***Does Mr. McNaught owe Mr. Ogryzlo for unpaid utilities and the cancelled Airbnb booking?***

20. Mr. Ogryzlo relies on the October agreement for his claim for unpaid utilities from November 2021 to July 2022. The October agreement said the “all in price” for October was \$713.65 consisting of base rent of \$625 and \$88.65 for utilities for the month. The October agreement did not explain how Mr. McNaught’s share of utilities were calculated or what utilities he would have to pay for. It included a link to a website under the utilities section but the information from that link is not in evidence.

21. The October agreement further said that since it was a fixed term rental agreement, Mr. Ogryzlo was not required to renew it, and Mr. McNaught was not required to stay after the fixed-term ended. However, the October agreement noted that when there was just over a month remaining, Mr. McNaught “might” be provided a new rental agreement.
22. Based on the October agreement’s terms, I find Mr. McNaught was required to vacate the property before November 1, 2021, which he undisputedly did not do. I find there was initially no agreement between the parties for Mr. McNaught to stay at the property after October 31, 2021. However, based on Mr. Ogryzlo’s November 2, 2021 messages mentioned above, I find Mr. Ogryzlo agreed to allow Mr. McNaught to stay until the end of November 2021. It is undisputed that Mr. McNaught did not move out at the end of November and has continued to pay Mr. Ogryzlo \$700 a month.
23. There is no evidence before me that Mr. Ogryzlo has given Mr. McNaught any notice to vacate the property since December 1, 2021. So, I find by failing to take any steps to evict Mr. McNaught after December 1, 2021 and continuing to accept Mr. McNaught’s \$700 monthly payments, Mr. Ogryzlo agreed to continue to rent the Mountain View room to Mr. McNaught on a month-to-month basis.
24. Does the parties’ agreement from November 2021 onwards require Mr. McNaught to pay extra for utilities? For the reasons that follow, I find it does not.
25. First, as noted above, Mr. Ogryzlo bases his claim for utilities mainly on the October agreement. However, given that the October agreement was for a fixed term, I find the agreement’s terms did not automatically apply after October 31, 2021.
26. Even if the October agreement’s terms continued to apply, I find Mr. Ogryzlo’s September 15, 2021 message saying he usually gets \$800 “all in” but for Mr. McNaught it would be \$700 conflicts with the way the October agreement said rent would be calculated. Notably, Mr. Ogryzlo admits Mr. McNaught’s October 2021 payment was not the same amount as that listed in the October agreement, but he accepted it without protest. Given the conflicting evidence, I prefer Mr. Ogryzlo’s

personal message to Mr. McNaught on September 15, 2021 saying he could pay \$700, with no mention of extra for utilities, and find this is more likely than not the price the parties agreed on over the price listed in the October agreement.

27. Further there is no evidence before me that Mr. Ogryzlo ever raised the issue of unpaid utilities with Mr. McNaught. In the Dispute Response, Mr. McNaught says the first time Mr. Ogryzlo told him that he was claiming for unpaid utilities was in June 2022, just before Mr. Ogryzlo started this CRT dispute. As noted, Mr. McNaught says that he has paid the agreed upon \$700 “all in” rent and owes nothing further.
28. As mentioned above, the burden is on Mr. Ogryzlo to prove his claims. I find he has failed to prove there was any agreement for Mr. McNaught to pay anything more than \$700 a month from November 2021 to July 2022, inclusive of any utilities. So, I dismiss Mr. Ogryzlo’s claim for unpaid utilities.
29. What about the cancelled Airbnb booking? The evidence shows there was a cancelled Airbnb booking for December 6 to December 17, 2021 for a different room in the house. Mr. Ogryzlo says he had to move a December 1 to December 31, 2021 booking made for the Mountain View room to the Cedar room because Mr. McNaught refused to move out. Mr. Ogryzlo says he only had a “less desirable” room left to offer the December 6 guest, which the guest turned down and cancelled the booking.
30. For the reasons that follow, I find that Mr. Ogryzlo is not entitled to the claimed \$707 for the cancelled booking. First, other than his own assertions, there is no evidence before me about the cancelled booking’s cost. Second, even if Mr. Ogryzlo had proven the booking was for \$707, I would not have awarded him the full amount since he undisputedly received \$700 from Mr. McNaught for December’s rent as well as an unspecified amount from the other guest that was moved into the Cedar room. So, I dismiss Mr. Ogryzlo’s \$707 claim for the cancelled Airbnb booking.
31. Nothing in this decision prevents Mr. Ogryzlo from giving Mr. McNaught notice to end the tenancy under the parties’ contract, if it is the case Mr. McNaught is still Mr. Ogryzlo’s tenant.

32. 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. Since Mr. Ogryzlo was unsuccessful, I dismiss his reimbursement claim for paid CRT fees. Mr. McNaught did not pay any CRT fees and neither party claims any dispute-related expenses, so I order no reimbursement.

## **ORDER**

33. I dismiss Mr. Ogryzlo's claims and this dispute.

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Nav Shukla, Tribunal Member