



Civil Resolution Tribunal

Date Issued: March 3, 2023

File: SC-2022-000246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ferriman v. Pearson*, 2023-BCCRT 180

B E T W E E N :

MARGARET JO-ANN FERRIMAN

APPLICANT

A N D :

CAROL ANN PEARSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Margaret Jo-Ann Ferriman, says her landlord, the respondent, Carol Ann Pearson, wrongfully evicted her without proper notice on November 11, 2021. Ms. Ferriman claims \$4,951.57: a \$1,200 refund for her paid November 2021 rent and deposit, \$1,973.65 for various expenses including a hotel stay, storage rental

fees, a missing car key fob, food, gas and printing expenses, \$827.92 for medical products she says she had to throw away, and \$950 in punitive damages.

2. Ms. Pearson says she was entitled to evict Ms. Ferriman without notice because she allegedly attacked her with a knife. She also says Ms. Ferriman breached the parties' agreement by overusing heat. Ms. Pearson says she owes Ms. Ferriman nothing.
3. The parties are both 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. Much of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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. Generally, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch under the Residential Tenancy Act (RTA). However, section 4 of the RTA says the RTA does not apply to disputes where a tenant shares a kitchen or bathroom with the owner. Ms. Pearson undisputedly owns the home and shared a kitchen with Ms. Ferriman. So, I find this is a contractual dispute falling within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.
9. Neither party provided their evidence or argument through the CRT's online system. Instead, Ms. Ferriman sent a binder of documents to the CRT which CRT staff uploaded to the CRT's online system. Ms. Pearson emailed CRT staff 6 documents which CRT staff also uploaded. Included was an index that suggested there was evidence Ms. Pearson intended to submit but the CRT did not receive. At my request, CRT staff emailed Ms. Pearson and gave her a final opportunity to review the documents the CRT had received and advise if any documents were missing. Ms. Pearson did not respond to this request. CRT staff did not copy Ms. Ferriman on this email. However, I find there was no prejudice to either party due to the CRT's inadvertent error since the purpose was to obtain potentially missing evidence, which ultimately was not provided. So, my decision is based on the evidence that is before me consisting of Ms. Ferriman's documents that were scanned from her binder and Ms. Pearson's 6 documents emailed to CRT staff.

10. Next, in her submissions Ms. Ferriman claims an unspecified amount for packing materials. However, Ms. Ferriman did not claim for packing materials in the Dispute Notice, so I find this claim is not properly before me and I make no findings about it.
11. Lastly, Ms. Ferriman's \$1,973.65 claim for expenses includes reprinting 5 books that she alleged went missing. However, in her submissions, Ms. Ferriman says she has located the missing books and withdrawn this aspect of her claim. So, I will not address the 5 books.

ISSUES

12. The issues in this dispute are:
 - a. Did Ms. Pearson or Ms. Ferriman first breach the contract?
 - b. If Ms. Pearson, what remedies is Ms. Ferriman entitled to?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Ms. Ferriman as the applicant must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision. Ms. Ferriman did not provide any reply argument, despite having the opportunity to do so.

Background

14. The following facts are undisputed. On November 1, 2021, Ms. Ferriman moved into Ms. Pearson's home where she was renting a room. Before moving in, Ms. Ferriman paid a \$350 deposit and \$850 rent for November.
15. Before Ms. Ferriman moved in, the parties undisputedly signed a contract. However, the contract is not in evidence. Ms. Pearson says the contract contained a term

limiting how much heat Ms. Ferriman could use. Ms. Ferriman does not address whether such a term was included in the signed contract. More on the contract below.

16. Ms. Ferriman says that on November 6, Ms. Pearson told her their living arrangement was not working and gave her 3 months' notice to vacate. A November 8, 2021 notice letter from Ms. Pearson to Ms. Ferriman in evidence sets out the 3 months' notice. In this letter, Ms. Pearson complained about Ms. Ferriman's heat usage.
17. Ms. Ferriman says that on November 9, Ms. Pearson gave her a 6 week notice to move out by December 30, 2021. A copy of this notice, also dated November 8, 2021, is in evidence. In this letter, Ms. Pearson complained Ms. Ferriman continued to misuse the heat, leaving it on maximum. Ms. Pearson also complained about Ms. Ferriman leaving lights on.
18. It is undisputed that on November 11, 2021, the parties had an altercation. However, the parties disagree about what happened that day. Ms. Ferriman's account is that Ms. Pearson said she wanted her out "right away" and that she would be calling someone to collect Ms. Ferriman's belongings. Ms. Ferriman says she then contacted the police who came and spoke with both parties.
19. In contrast, Ms. Pearson says when she went to put Ms. Ferriman's chair in her (Ms. Ferriman's) room that day, Ms. Ferriman started yelling and pushing her. Ms. Pearson says Ms. Ferriman then went downstairs to the kitchen, pulled out a bread knife and came toward Ms. Pearson yelling "get out". Ms. Pearson says she ran outside with her dog, upset, and called the police. The police report is not in evidence.
20. Ms. Ferriman denies coming at Ms. Pearson with a knife and says Ms. Pearson fabricated the account. In any event, Ms. Pearson undisputedly evicted Ms. Ferriman on November 11. Ms. Ferriman left Ms. Pearson's property without her belongings, which she retrieved on November 28, 2021.

Who breached the contract?

21. I find Ms. Ferriman's claim is for damages resulting from Ms. Pearson's alleged breach of contract for evicting Ms. Ferriman without reasonable notice. As noted above, Ms. Pearson says it was Ms. Ferriman who breached the parties' contract by continually setting the heat to maximum and threatening Ms. Pearson with a knife. I find Ms. Pearson argues that by threatening her with a knife, Ms. Ferriman breached an implied contractual term of reasonable safety in the home, which allowed Ms. Pearson to evict Ms. Ferriman without notice.
22. Although Ms. Pearson says Ms. Ferriman breached the parties' agreement by "abusing the heat", since the parties' signed agreement is not in evidence, I find it unproven that the parties agreed to any specific restrictions about Ms. Ferriman's heat usage. However, since Ms. Ferriman's \$850 rent undisputedly included utilities, I find the parties' agreement contained an implied term that Ms. Ferriman would use the utilities reasonably. Ms. Ferriman denies she abused the heat. Other than Ms. Pearson's assertions, there is little evidence before me of Ms. Ferriman allegedly mis-using heat. So, I find it unproven that Ms. Ferriman used the heat unreasonably.
23. What about the alleged incident with the knife? Ms. Pearson's evidence includes written statements from various friends and neighbours that say Ms. Pearson told her that Ms. Ferriman threatened her with a knife. However, it is undisputed that these friends and neighbours did not witness the altercation. So, I give no weight to these hearsay statements.
24. Further, in the Dispute Response filed at the outset of this proceeding Ms. Pearson noted she had recorded the November 11 altercation. However, Ms. Pearson failed to provide any such evidence. Parties are told to submit all relevant evidence and I find the recording is clearly relevant. So, I draw an adverse inference against Ms. Pearson and find if the recording showed Ms. Ferriman threatened Ms. Pearson with a knife, she would have submitted it. Because Ms. Pearson alleges the incident occurred, the burden is on her to prove it and I find she has not done so. I find it more likely than not that Ms. Ferriman did not threaten Ms. Pearson with a knife on

November 11. So, I find it unproven that Ms. Ferriman breached the parties' agreement.

25. While the RTA does not apply to rentals where the owner shares a kitchen with the tenant, the CRT has previously held that it is an implied term in these types of agreements that a landlord must provide reasonable notice before ending the tenancy (see for example *Anderson v. Kuzmick*, 2023 BCCRT 106). CRT decisions are not binding, but I agree with the reasoning in this decision.
26. So, I find Ms. Ferriman was entitled to reasonable notice before Ms. Pearson ended the tenancy. The parties do not say what a reasonable notice period was here. The CRT has implied reasonable notice terms of 1 month in similar agreements in decisions such as *Philips v. Roberts*, 2021 BCCRT 109 and *Anderson*. I find it is appropriate here to imply a 1 clear month notice term here, which would be until December 31, 2021. I find that by evicting Ms. Ferriman without notice on November 11, Ms. Pearson breached the parties' agreement.

What remedies are appropriate?

27. Damages for breach of contract are generally intended to place the innocent party in the position they would have been in had the contract been carried out by both parties (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319). As mentioned above, Ms. Ferriman seeks a refund for the full amount of her \$850 rent for November. I find refunding Ms. Ferriman for all of November would result in her being put in a better position than she would have been if not for the breach. As noted, Ms. Ferriman was evicted on November 11. So, I find Ms. Ferriman is entitled to a refund for 19 days' unused rent from November 12 to November 30. This equals \$538.33. I do not award Ms. Ferriman a refund for her rent for November 11 as this would amount to double recovery given my finding below about the hotel bill.
28. I turn to the deposit. In the Dispute Response, Ms. Pearson said she offered to return the \$350 deposit, but Ms. Ferriman refused. Ms. Pearson also says Ms. Ferriman caused her to incur extra expenses. However, Ms. Pearson did not provide any

receipts to prove what expenses she allegedly incurred. So, in the absence of any evidence supporting a set-off or money owing to Ms. Pearson, I find Ms. Ferriman is entitled to the \$350 deposit's return.

29. Next, Ms. Ferriman claims a combined \$1,973.65 for a hotel bill, storage fees, a missing key fob, food, money spent on gas to prepare this dispute and printing and photocopying charges. I find Ms. Ferriman's claim for gas and printing/photocopying expenses are not damages resulting from Ms. Pearson's breach but rather expenses relating to this dispute. So, I discuss these later as dispute-related expenses. I discuss the remaining claims below.
30. A receipt in evidence shows Ms. Ferriman paid \$115 for a hotel room on November 11 after Ms. Pearson evicted her. I find Ms. Ferriman would not have incurred this expense if Ms. Pearson did not evict her without reasonable notice. So, I find Ms. Ferriman is entitled to \$115 for the November 11 hotel stay.
31. Ms. Ferriman's undisputed evidence is that after she was evicted, she was only able to find a shelter to stay at and could have few belongings with her, so she had to rent a storage locker. She claims \$878.73 for storage fees from November 24, 2021 to October 31, 2022. Ms. Ferriman says Ms. Pearson owes her for storage fees until October 2022 because this is how long it took Ms. Ferriman to find a permanent residence after the eviction. However, given my finding that Ms. Pearson was required to give Ms. Ferriman only 1 clear month's notice, I find Ms. Pearson is not liable for the storage fees after the end of the notice period.
32. Had Ms. Pearson given Ms. Ferriman 1 clear month's notice, Ms. Ferriman would have had to pay Ms. Pearson rent for December while she searched for alternative accommodations. While Ms. Ferriman likely did not pay for her December accommodation at the shelter, the shelter's level of accommodation was undisputedly minimal compared to the accommodations she would have had at Ms. Pearson's home until December 31, 2021. So, I find it reasonable to order Ms. Pearson to pay for Ms. Ferriman's storage fees from November 28, the date she retrieved her belongings from Ms. Pearson's home, until the end of December 2021. Based on

receipts in evidence, I find Ms. Pearson owes Ms. Ferriman \$7.24 for storage fees from November 28 to November 30 and \$76 for the month of December. This totals \$83.24.

33. Ms. Ferriman also claims \$350 for a car key fob she alleges Ms. Pearson stole from her coat pocket. I find this claim is not for damages resulting from Ms. Pearson's breach. In any event, I find the allegation that Ms. Pearson stole the key fob speculative and unproven based on the evidence before me. So, I dismiss this aspect of the claim.
34. Ms. Ferriman also claims \$100 for food she says she had to throw out because it went bad while Ms. Pearson had her belongings between November 11 and November 28. Ms. Pearson says she had purchased "vegetables, meat, staples, etc." when moving in and also brought various opened condiments and dressings with her. Other than this vague description of the food she allegedly had to throw away, Ms. Ferriman provided no evidence such as receipts or photographs in support of her \$100 claim. So, I find this loss unproven and dismiss this claim.
35. Next, Ms. Ferriman claims reimbursement of \$827.92 for medical products she says she had to throw away. She alleges Ms. Pearson left these medical products in a plastic bag in a cold environment between November 11 and November 28 impacting their efficacy. Ms. Pearson denies this and says she kept the medical products inside until Ms. Ferriman retrieved them. On balance, I find it unproven that the medical products were left in the cold or otherwise lost their efficacy and needed to be replaced. So, I deny Ms. Ferriman's \$827.92 claim for the medical products.
36. Lastly, Ms. Ferriman claims \$950 for punitive damages. She says Ms. Pearson's conduct during the time she lived with her was abusive and severely impacted her health. The Supreme Court of Canada has said the purpose of punitive damages is to punish extreme conduct worthy of condemnation, and can only be awarded to punish harsh, vindictive, reprehensible and malicious behaviour (see *Vorvis v. ICBC*, 1989 CanLII 93 (SCC)). I find the evidence before me does not prove on a balance

of probabilities that Pearson's conduct was harsh, vindictive, reprehensible and malicious. So, I dismiss this claim.

37. The Court Order Interest Act (COIA) applies to the CRT. I find Ms. Ferriman is entitled to pre-judgment interest on the \$1,003.33 for unused rent, the deposit, and hotel stay from November 11, 2021, the date she was evicted and incurred the hotel expense to the date of this decision. Ms. Ferriman is also entitled to pre-judgment interest on the \$83.24 storage fees from November 24, 2021, the date she made the payment, to the date of this decision. Together, the pre-judgment interest equals \$20.62.
38. 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 Ms. Ferriman was partially successful, I find she is entitled to reimbursement of \$100 for half her paid CRT fees. As noted, Ms. Ferriman also claims an estimated \$200 for gas for trips to and from the shelter to various printing and typing facilities and \$264.27 for printing and copying. Ms. Ferriman says she incurred these amounts because she did not have access to a computer to prepare this dispute. Since the CRT is an online tribunal, it does not typically award reimbursement for gas and photocopying expenses. While I accept Ms. Ferriman did not have access to a computer at the shelter, I find she likely could have gained access to a computer and submitted her evidence and argument online instead of incurring significant photocopying and printing charges. Ms. Ferriman also did not provide any explanation for how she calculated her \$200 gas expense claim. On balance, I find Ms. Ferriman has not proven these were reasonable expenses under the circumstances and I dismiss her dispute-related expenses claim.

ORDERS

39. Within 30 days of the date of this decision, I order Ms. Pearson to pay Ms. Ferriman a total of \$1,207.19, broken down as follows:
- a. \$1,086.57 in damages,

b. \$20.62 in pre-judgment interest under the COIA, and

c. \$100 in CRT fees.

40. Ms. Ferriman is entitled to post-judgment interest under the COIA, as applicable.

41. I dismiss Ms. Ferriman's remaining claims.

42. 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.

Nav Shukla, Tribunal Member