



Civil Resolution Tribunal

Date Issued: March 9, 2023

File: SC-2022-003596

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Uche-Nweke v. Williamson*, 2023 BCCRT 196

B E T W E E N :

CHINONSO (SIXTUS) UCHE-NWEKE

APPLICANT

A N D :

DARIN WILLIAMSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Chinonso (Sixtus) Uche-Nweke, undisputedly paid the respondent, Darin Williamson, a \$400 security deposit to rent a room in Mr. Williamson's home in May 2022. Mr. Uche-Nweke says Mr. Williamson did not allow them to move in and also refused to return their deposit. Mr. Uche-Nweke seeks a \$400 refund for their paid deposit and \$1,545.17 reimbursement for the amount they say they spent for

alternative accommodations for May. Mr. Uche-Nweke also seeks \$130 in damages for discriminatory comments they allege Mr. Williamson made.

2. Mr. Williamson denies that he prevented Mr. Uche-Nweke from moving in. Instead, he says Mr. Uche-Nweke failed to move in as agreed. So, Mr. Williamson says he owes Mr. Uche-Nweke nothing. Mr. Williamson also says that by not paying rent for May, Mr. Uche-Nweke caused him to lose \$800 in rent for the month. Mr. Williamson did not file a counterclaim for the alleged lost rent. Lastly, Mr. Williamson denies making any discriminatory comments about Mr. Uche-Nweke.
3. Both parties are 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. Some of the evidence in this dispute amounts to a "they said, he 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. The CRT generally does not have jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the Residential Tenancy Branch under the *Residential Tenancy Act* (RTA). However, the RTA does not apply where a tenant shares a kitchen or bathroom with an owner. Mr. Williamson undisputedly owned the home. Based on the Craigslist listing for the room rental in evidence, I find it likely the parties would have shared a kitchen or bathroom, had Mr. Uche-Nweke moved in. Further, neither party says the CRT should not resolve this dispute. So, I find this is a contractual dispute within the CRT's small claims jurisdiction over debt and damages under CRTA section 118.

ISSUES

9. The issues in this dispute are:
 - a. Did Mr. Williamson or Mr. Uche-Nweke first breach the parties' agreement?
 - a. What remedies is Mr. Uche-Nweke entitled to, if any?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Uche-Nweke as the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"). I have

considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

11. The evidence shows as follows. On April 19, 2022, Mr. Williamson posted a listing for a fully furnished room rental on Craigslist. The listing said rent was \$800 a month, and that a \$400 security deposit and 1 year rental agreement would be required. The listing's title included the city the home was located in, and the full property address was also included under a map in the listing.
12. Mr. Uche-Nweke's evidence includes selected text messages between the parties. Many of the messages are undated but based on the parties' submissions, I find Mr. Uche-Nweke first contacted Mr. Williamson about the room rental on May 1, 2022. Mr. Williamson asked Mr. Uche-Nweke to provide proof of vaccination and other documents, following which he said he would arrange a showing for Mr. Uche-Nweke.
13. At some point on May 1, Mr. Uche-Nweke sent Mr. Williamson a \$400 e-transfer for the security deposit. Mr. Williamson confirmed receipt and told Mr. Uche-Nweke the room was theirs and that he would see them at 2 pm the next day (May 2). Mr. Williamson then told Mr. Uche-Nweke to enjoy their evening and welcomed them to Mr. Williamson's home. Based on these text messages I find the parties entered into an enforceable agreement on May 1 for Mr. Uche-Nweke to rent a room in Mr. Williamson's home.
14. In an undated text message, which I infer from the message's content is from May 2, Mr. Uche-Nweke told Mr. Williamson that Mr. Williamson's home was a 6-hour bus ride from where they were currently staying and that they would aim to be there "tomorrow". Mr. Williamson responded that Mr. Uche-Nweke had already "broken 3 appointments" that Mr. Uche-Nweke had made with him. He then said that he would agree to arrange a time with Mr. Uche-Nweke "tomorrow" if they e-transferred "today's rent" immediately. In another undated message which I infer is from later the same day, Mr. Uche-Nweke told Mr. Williamson that they will "be taking the place" and Mr. Williamson will get the rent. Mr. Williamson responded that Mr. Uche-Nweke knew rent was due "today, not tomorrow".

15. On May 3, Mr. Williamson messaged Mr. Uche-Nweke saying that he had not received the e-transfer from Mr. Uche-Nweke. It is undisputed that Mr. Uche-Nweke did not pay Mr. Williamson any rent.
16. Mr. Uche-Nweke says it was only after sending Mr. Williamson the \$400 deposit that they realized on May 2 that Mr. Williamson's home was 3 hours away from the university Mr. Uche-Nweke was going to be attending. Mr. Uche-Nweke says after realizing this, they told Mr. Williamson that they could not take the rental as his home was too far. Mr. Uche-Nweke also says they found a rental that was cheaper than Mr. Williamson's.
17. Mr. Uche-Nweke says after they told Mr. Williamson they could not take the rental, Mr. Williamson refused to return the \$400 deposit and insisted Mr. Uche-Nweke "take the place" and also allegedly made "court threats". Further, Mr. Uche-Nweke says Mr. Williamson sent a text message refusing to allow them to move in. However, this alleged message is not in evidence.
18. Mr. Uche-Nweke says they attempted to move in on May 3, but Mr. Williamson did not allow them to enter the home and asked that they leave the property over the phone. As noted, Mr. Williamson denies he ever prevented Mr. Uche-Nweke from moving in.
19. Mr. Uche-Nweke's evidence includes an undated statement from AM, Mr. Uche-Nweke's partner. AM says they were aware of Mr. Uche-Nweke's situation with the rental and says Mr. Williamson refused to let Mr. Uche-Nweke move in or return the \$400 deposit. AM does not say how they became aware of these events. There is no evidence that AM personally witnessed any conversations between the parties. So, I find AM's statement is hearsay and do not give it any weight.
20. On balance, I find the evidence before me does not prove that Mr. Williamson refused to let Mr. Uche-Nweke move in after accepting the deposit. Rather, given Mr. Uche-Nweke's expressed concern about the distance, I find it more likely that Mr. Uche-Nweke decided not to move in and breached the parties' agreement.

21. Is Mr. Uche-Nweke entitled to the security deposit's return? Since I have found Mr. Uche-Nweke breached the parties' agreement by failing to move in, I find Mr. Williamson was entitled to keep Mr. Uche-Nweke's security deposit to off-set his losses from Mr. Uche-Nweke breach. It is undisputed, and I find the evidence also shows, that Mr. Williamson was not able to find a new tenant until May 19 for a June 1 move-in date. So, I find Mr. Williamson lost \$800 in rent for May due to Mr. Uche-Nweke's breach, entitling him to keep the \$400 security deposit to off-set that loss. I dismiss Mr. Uche-Nweke's refund claim for the \$400 deposit accordingly.
22. Further, since I have found that it was Mr. Uche-Nweke and not Mr. Williamson that breached the parties' agreement, I find Mr. Uche-Nweke is not entitled to the claimed \$1,545.17 in expenses for finding alternative accommodations for May.
23. Lastly, as noted above, Mr. Uche-Nweke claims \$130 in damages for discriminatory racial comments allegedly made by Mr. Williamson. As noted, Mr. Williamson denies making any such comments. Given the parties' conflicting evidence and the lack of additional evidence supporting either parties' account, I find there is an evidentiary tie. As mentioned above, the burden is on Mr. Uche-Nweke to prove their claims. So, given the evidentiary tie, I find this claim unproven and dismiss it.
24. 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. I see no reason in this case not to follow that general rule. Since Mr. Uche-Nweke was unsuccessful, I dismiss their claim for paid CRT fees. Mr. Williamson did not pay any fees and neither party claims any dispute-related expenses, so I order no reimbursement.

ORDER

25. I dismiss Mr. Uche-Nweke's claims and this dispute.

Nav Shukla, Tribunal Member