Civil Resolution Tribunal

Date Issued: April 14, 2023

File: SC-2022-005963

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *O'Dea v. Dabrowski*, 2023 BCCRT 305

B E T W E E N :

EMILY O'DEA

APPLICANT

A N D :

CIAN DABROWSKI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Christopher C. Rivers

INTRODUCTION

1. This dispute is about the end of a residential tenancy. The applicant, Emily O'Dea, rented a room in a condominium owned and occupied by the respondent, Cian Dabrowski. Ms. O'Dea makes this claim for a return of her $625 security deposit.

2. Ms. Dabrowski says she kept the security deposit to cover repairs, cleaning, a lock change, and utility bills. She says their cost was more than the security deposit, and so she asks that I dismiss Ms. O'Dea's claim.

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.

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. Generally, the CRT does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, section 4(c) of the *Residential Tenancy Act* (RTA) says that the RTA does not apply to accommodations in which a tenant shares bathroom or kitchen facilities with the

accommodation's owner. As Ms. O'Dea undisputedly shared kitchen and bathroom facilities with the condominium's owner, Ms. Dabrowski, I find the RTA does not apply. So, this is a contract dispute, which falls under the CRT's small claims jurisdiction.

9. Finally, Ms. Dabrowski requests anonymity in the published version of this decision, as she says having her name and her place of residence published is a safety risk. She also argues it could injure her professional reputation. This published decision does not include identifying information about Ms. Dabrowski's residence, so I find that concern is not an issue. Parties in CRT proceedings are generally named, consistent with an 'open court' principle that allows for transparency. I find there is nothing in this dispute that would warrant departing from the open court principle, and so I will not anonymize Ms. Dabrowski's name.

ISSUE

10. The issue in this dispute is whether Ms. O'Dea is entitled to the return of some, or all, of her security deposit from Ms. Dabrowski.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. O'Dea must prove her claim 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.

12. On August 25, 2021, the parties signed a standard-form RTB rental contract, with one page of additional terms, for a one-year tenancy from September 1, 2021 to August 31, 2022.

13. On August 31, 2021, the parties signed a second contract about the same tenancy called the "Shared Housing Agreement". None of the terms in the contracts addressed in this dispute are apparently in conflict. So, I find the second contract operates in addition to the first contract, and the parties are bound by the terms of both contracts.

14. There is no dispute Ms. O'Dea gave notice to end the tenancy before the term was over. Ms. O'Dea undisputedly paid rent to the end of July 2022 and moved out before July 31, 2022.

15. Under both contracts, Ms. O'Dea was required to pay Ms. Dabrowski a $625 security deposit before moving in. She did so. However, the two contracts set out multiple circumstances under which Ms. Dabrowski is entitled to keep some, or all, of the security deposit.

16. In an August 10, 2022 letter from Ms. Dabrowski to Ms. O'Dea, Ms. Dabrowski explained why she was keeping the security deposit, saying that she incurred costs for repairs and cleaning for:
    a. Repairing 6 deep screw holes from bedroom mirror mountings
    b. Repainting two window sills where stains could not be removed
    c. Repairing scuffs and 2 small dents in the hallway from moveout
    d. Disposing of a coffee maker
    e. Cleaning the bedroom, bathroom, fridge, and patio deck

17. The letter did not provide itemized charges for painting or repairing damages, but included a painter fee ($250) and a cleaning fee ($100).

18. The letter also included charges to replace a lock, including a locksmith fee ($180) and a lock purchase cost ($110.90). Finally, the letter set out amounts owing for a hydro bill ($27.72), and a Telus bill ($59.47).

19. All together, these costs total $728.09. Ms. Dabrowski says in both the letter and in her submissions that she decided not to request Ms. O'Dea to pay the amount over $625 and determined to simply keep the whole deposit to pay those charges. To be clear, Ms. Dabrowski did not file a counterclaim, and does not claim any additional amount in this dispute.

The Standard-Form RTA Contract

20. First, I must consider the standard-form RTA contract. Its clause 6 refers to the RTA, and sets out what the landlord must do to keep some or all of the security deposit.

21. As stated above, the RTA would not typically apply to this dispute. However, by using the standard-form contract, the parties have specifically incorporated sections 23, 24, 35, and 36 of the RTA into clause 6(3) of their contract. These sections became terms of the contract, and the parties must follow them.

22. Under section 23(4) of the RTA, Ms. Dabrowski, as the landlord, must complete a condition inspection report at the start of a new tenancy. Under section 19(a) of the *Residential Tenancy Regulation*, the condition inspection report must be in writing. If Ms. Dabrowski does not complete a written inspection report, she cannot make any claim against the security deposit for damage to her property under section 24 of the RTA.

23. There is no evidence that Ms. Dabrowski completed a written condition inspection report when Ms. O'Dea moved in. While Ms. Dabrowski provided evidence the parties completed a video walkthrough together, and says Ms. O'Dea noted no issues, that is not sufficient under the RTA's term that the parties agreed to include in their contract. So, I find Ms. Dabrowski cannot depend on the first contract to retain the security deposit for damage to the residential property.

24. Other than to address damage to the residential property, there are no other ways under the first contract that Ms. Dabrowski is entitled to keep a portion of the security deposit. So, I find Ms. Dabrowski has no entitlement to the security deposit under the standard-form contract.

The Shared Housing Contract

25. Under clause 9 of the parties' second contract, Ms. Dabrowski can claim some or all of the security deposit in a variety of circumstances. Ms. Dabrowski has highlighted sections of the contract that she says apply in this dispute. Clause 9 generally

accounts for damage and cleaning beyond normal wear and tear, but also includes specific terms for repair due to “plugs, large nails, or any unreasonable number of holes in the walls” and “repainting to repair the results of any other improper use or excessive damage” (reproduced as written).

26. Clause 9 is further clarified by clause 11, which requires Ms. Dabrowski to return to the security deposit, less any deductions, but says “no deduction will be made for damage due to reasonable wear and tear.”

27. I find clause 11 makes it clear that any damage must be beyond reasonable wear and tear. Ms. Dabrowski provided photos of the holes, scuffs, dents, and stains. Even if Ms. O’Dea had caused all that damage, which she disputes, I find from the photographs the issues are minimal, limited, and easily fixed. There is not an unreasonable number of holes or any evidence of improper use. I find that none of them go beyond the reasonable wear and tear that would be expected when a party has occupied a space for 11 months. I also note the bathroom, patio, and kitchen were shared spaces, so the parties each had responsibility to keep them clean, and Ms. Dabrowski has not proved Ms. O’Dea was solely responsible for any needed cleaning. As such, I find Ms. Dabrowski was not entitled to keep some or all of the security deposit for damage repairs or cleaning under the second contract.

Set-Off

28. In her letter to Ms. O’Dea, and in her submissions, Ms. Dabrowski claims she should be entitled to keep a share of the deposit for costs she incurred changing a lock and for unpaid utility bills.

29. As Ms. Dabrowski did not file a counterclaim, I infer she is asking for a set-off from what she owes under the contract. When a party alleges a set-off, the burden of proving the set-off is theirs, including proving what damages arise from the breach. See: *Wilson v. Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203.

30. First, Ms. Dabrowski claims $290.90 to replace a lock. She says Ms. O’Dea compromised her safety by having given her keys and security fob to multiple people

to access the condominium, and that she was not comfortable with the idea that anyone else would have possession of her keys. In her submissions, Ms. Dabrowski says Ms. O'Dea gave the key and fob to a 3rd party to return them.

31. Ms. O'Dea acknowledges she gave her key and fob to her friends and family from time to time to access the condominium. Ms. O'Dea also agrees she gave the key and fob to a 3rd party to drop off at the end of the tenancy so she would not have to interact with Ms. Dabrowski. Ms. O'Dea says the 3rd party was a mutual friend, and that she drove the mutual friend to the building to return the key.

32. I find Ms. O'Dea's actions were reasonable in the circumstances. Ms. O'Dea was not prevented by the contracts or legislation from loaning her keys to her friends and family. At the end of the tenancy, she took reasonable steps to return the keys, and I find that her use of a 3rd party does not entitle Ms. Dabrowski to the cost of changing the locks. I find Ms. Dabrowski has not proved that she is entitled to a set-off for the lock change.

33. Second, Ms. Dabrowski claims $87.19 for unpaid utility bills. Under the terms of the parties' contracts, Ms. O'Dea is responsible for 50% of the hydro and Telus bill. Ms. O'Dea does not dispute owing a share of those bills for the relevant period. She does not argue that the amounts calculated by Ms. Dabrowski are incorrect, and I do not find anything apparently incorrect based on the evidence before me. So, I find Ms. Dabrowski is entitled to a set-off of $87.19 for unpaid utility bills.

34. In summary, I find Ms. O'Dea is entitled to $537.81 of her security deposit, accounting for a set-off of $87.19 for unpaid utility bills.

35. The *Court Order Interest Act* applies to the CRT. Ms. O'Dea is entitled to pre-judgment interest on the balance owing of her security deposit from August 15, 2022, the date by which Ms. Dabrowski had to mail Ms. O'Dea her deposit, to the date of this decision. This equals $10.30.

36. 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. I find Ms. O'Dea is entitled to reimbursement of $125 in CRT fees. She did not claim any dispute-related expenses.

ORDERS

37. Within 14 days of the date of this order, I order Ms. Dabrowski to pay Ms. O'Dea a total of $673.11, broken down as follows:

    a. $537.81 for the balance of Ms. O'Dea's security deposit,

    b. $10.30 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

38. Ms. O'Dea is entitled to post-judgment interest, as applicable.

39. 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.

Christopher C. Rivers, Tribunal Member