



Civil Resolution Tribunal

Date Issued: April 24, 2023

File: SC-2022-005809

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McNamara v. Farry*, 2023 BCCRT 331

B E T W E E N :

OWEN MCNAMARA and SERENA KOCCHAR

APPLICANTS

A N D :

JULIA FARRY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a roommate dispute.
2. The applicants, Owen McNamara and Serena Kocchar, say they rented a room in a shared house from the respondent, Julia Farry. The applicants say they were evicted from the house without proper notice and Ms. Farry wrongfully withheld their damage

deposit. They claim \$1,070, for 1 month's rent, the damage deposit, moving expenses, and loss of work. Mr. McNamara represents the applicants.

3. Ms. Farry says only Ms. Kocchar rented the room and Mr. McNamara was allowed to stay with Ms. Kocchar temporarily. Ms. Farry also says she and "the roommates" asked the applicants to leave because the applicants' behaviour made them feel unsafe. She says she did not return the damage deposit because the applicants left their room messy and "full of stuff", and she was unable to properly assess whether they had caused any damage. As for the loss of work, Ms. Farry denies that is her responsibility. Ms. Farry 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.
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, she said" scenario. Credibility of 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over roommate disputes like this one. So, I find the RTA does not apply and this is a contractual roommate dispute within the CRT's small claims jurisdiction over debt and damages.

ISSUES

9. The issues in this dispute are:
 - a. Who are the parties to the rental agreement?
 - b. Did any of the parties to the rental agreement breach it?
 - c. If so, what are the appropriate remedies?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). 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.

The parties to the rental agreement

11. Text messages between Ms. Kocchar and Ms. Farry show that in April 2022, Ms. Farry agreed to rent Ms. Kocchar a room in a shared house for \$689 a month beginning May 1. It is undisputed that the cost of utilities was in addition to the monthly rent, and that Ms. Kocchar paid a damage deposit of \$273. Based on the evidence before me, I find there are no other explicit contractual terms to which Ms. Kocchar and Ms. Farry agreed.

12. In certain circumstances, contractual terms may be implied. Implied terms are terms the parties did not expressly consider, discuss, or write down but which are founded on the parties' common presumed intention. Here, I find it was an implied term of the rental agreement that either party would give the other reasonable notice to end it. Previous CRT decisions have found roommate agreements include an implied reasonable notice period of 1 month (see e.g., *Anderson v. Kuzmick*, 2023 BCCRT 106 and *Phillips v. Roberts*, 2021 BCCRT 109). CRT decisions are not binding on me, but I agree with the reasoning in these decisions. I find a 1-month notice term was implied here. I also find the rental agreement included an implied term that the parties would treat each other respectfully and not engage in behaviour that made the other feel unsafe (see for example *Wells v. Stetsko*, 2021 BCCRT 545, and *Ahn v. Hsu*, 2021 BCCRT 974).
13. I turn back to the facts. Around May 31, 2022, Ms. Kocchar messaged the roommates asking if Mr. McNamara could stay in her room "for a week or so", to which they undisputedly agreed. The evidence suggests Mr. McNamara arrived shortly after that.
14. The parties agree Mr. McNamara stayed in the house longer than a week. However, there is no evidence he entered into a rental agreement with Ms. Farry or any of the other roommates, or that Ms. Kocchar and Ms. Farry's rental agreement was amended to include him as a tenant. There is also no documentary evidence to support Mr. McNamara's assertion he paid rent. The evidence shows Ms. Kocchar e-transferred the rent to Ms. Farry.
15. I note the applicants provided a spreadsheet they say showed the utility payment split between the roommates and which suggested Mr. McNamara was responsible for paying \$14.61. It is unclear who created and maintained the spreadsheet, though Ms. Farry does not dispute it showed how the roommates split utility payments. However, there is no evidence Mr. McNamara paid \$14.61 or any other amount for utilities. In contrast, the applicants submitted a screenshot of Ms. Kocchar's e-transfer for her portion of the utilities as set out in the spreadsheet.

16. In these circumstances, I find the only rental agreement was between Ms. Kocchar and Ms. Farry, and Mr. McNamara was simply Ms. Kocchar's guest. As such, I find he lacks standing (the legal right), to bring this claim for breach of contract. To have standing, a party must have a "legally recognized interest in the claims made" (see *Extra Gift Exchange Inc., et al v. Ernest & Twins Ventures (PP) Ltd., et al*, 2007 BCSC 426 at paragraph 51). Since I find Mr. McNamara does not have a legally recognized interest in the rental agreement, I dismiss his claim.
17. Even if I had found Mr. McNamara was a party to the rental agreement or had a separate rental agreement, I would have found his claims unproven, as they are unsupported by evidence. To the extent Mr. McNamara argues Ms. Farry was negligent with his belongings, I find this claim was not set out in the Dispute Notice and so it is not properly before me. In any event, I find Mr. McNamara has not proven the things required to prove negligence: that Ms. Farry owed him a duty of care, that she breached the applicable standard of care, and that he suffered damage because of the breach.
18. The balance of my reasons address Ms. Kocchar's claim.

Was there a breach of the rental agreement?

19. Ms. Farry says around August 5, 2022 she asked the applicants to move out of the house by August 8. She says this was because some of the roommates felt unsafe due to the applicants' behaviour. I infer Ms. Farry alleges Ms. Kocchar breached the rental agreement, entitling her to end it immediately.
20. In particular, Ms. Farry says Ms. Kocchar texted one of the roommates a picture of a dead cougar and left the door to her room open with a hatchet on a table which "suggests violence and hatred." Ms. Farry also says the applicants returned to the house from a trip on August 3, having recently tested positive for COVID-19 but then claimed to have tested negative the next day. I infer Ms. Farry is suggesting the applicants were untruthful about the timeline of their COVID-19 infection.

21. In contrast, the applicants say they agreed to leave once they had found alternative housing. They also say they did not display violent or unsafe behaviour. They suggest Ms. Kocchar sent the picture of the dead cougar to one of the roommates in jest based on their name, and not to be threatening. They also explain the hatchet was a gift from a family member which was stored in the room with the door closed, and that one of the roommates saw it when they entered the room without permission. Turning to the COVID-19 allegations, the applicants say they returned to the house wearing masks when they no longer had symptoms, and provided negative antigen test results on August 4, the day after their return, which is supported by the text message evidence.
22. Ms. Farry and other roommates may have been uncomfortable with the applicants' COVID-19 status or doubted their story. However, there is no evidence Ms. Kocchar behaved in an unsafe or reckless way or was untruthful about her illness in breach of the rental agreement. On the contrary, the evidence suggests the applicants largely stayed in their room and provided negative antigen test results on August 4. Further, I find keeping a hatchet in the room with the door open or closed was not objectively violent on its own. Even when considered together with the picture of a dead cougar, I find a reasonable person in these circumstances would not necessarily consider this behaviour threatening or violent, such that it breached the rental agreement. I find the picture's context supports the applicants' explanation for why Ms. Kocchar sent it, rather than any sinister reason. Also, the text message evidence indicates the dead cougar and hatchet incidents occurred several weeks before Ms. Farry asked the applicants to leave. It further suggests it was primarily the COVID-19 incident that caused discomfort amongst the roommates, triggering the request that the applicants leave. Based on all of this, I find Ms. Kocchar did not breach the rental agreement by engaging or allowing her guest to engage in violent or unsafe behaviour.
23. Given I find Ms. Kocchar did not breach the rental agreement, it follows Ms. Farry was required to provide 1 month's notice to end it. I find by giving Ms. Kocchar 3 days' notice, Ms. Farry breached the rental agreement's implied reasonable notice term.

Remedies

24. What is the appropriate remedy for Ms. Farry's breach? She says after giving Ms. Kocchar 3 days' notice, it was agreed the applicants could stay until the end of August, with a pro-rated rent refund calculated daily if they left early. The applicants do not dispute this. The evidence suggests Ms. Kocchar intended to leave around August 18, but it is unclear whether she did. In any case, it is undisputed she left some of her belongings in the house into September.
25. Damages for breach of contract are generally meant to put the innocent party in the same position as if the contract had been performed as agreed (see *Water's Edge resort v. Canada (Attorney General)*, 2015 BCCA 319). Here, had Ms. Farry given Ms. Kocchar the required notice, she would have had to move by September 5. As noted above, some of Ms. Kocchar's belongings remained on the property until at least early September. Ms. Farry says Ms. Kocchar's belongings were still in the room on September 1 so she moved them to the shed. She also says the applicants attempted to enter the house on September 6, which the applicants do not deny. I find by leaving her belongings in the room into September, Ms. Kocchar continued to occupy it. I also find by not attempting to retrieve them until September 6, Ms. Kocchar did not move out by September 5 as required. Since Ms. Kocchar did not move out by September 5, I find she did not suffer any proven loss due to Ms. Farry's rental agreement breach, and so is not entitled to damages. I dismiss this aspect of Ms. Kocchar's claim.
26. Ms. Kocchar also seeks \$273 for the damage deposit she says Ms. Farry failed to return. Ms. Farry does not deny this. To retain a damage deposit, the party making the allegation bears the burden of proving the other party caused damage. Ms. Farry did not provide evidence Ms. Kocchar damaged the room or left it messy and "full of stuff" as alleged, so I find she has not met the burden of proof. I allow Ms. Kocchar's \$273 damage deposit claim.
27. Finally, I turn to Ms. Kocchar's claim for moving expenses and loss of work. Ms. Kocchar has provided no evidence in support of these claims. In any event, I find Ms.

Kocchar would have had to incur moving expenses even if Ms. Farry had not breached the rental agreement, so those are not compensable losses. In addition, Ms. Kocchar did not explain how Ms. Farry is responsible for her loss of work. So, I dismiss these aspects of Ms. Kocchar's claim.

INTEREST, CRT FEES AND EXPENSES

28. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Kocchar is entitled to pre-judgment interest on the \$273 award from September 6, 2022, the earliest reasonable date I find Ms. Kocchar moved out, to the date of this decision. This equals \$5.28.
29. 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. However, Ms. Kocchar did not pay fees, so I make no order for reimbursement. She also did not claim dispute-related expenses, so I award none.

ORDERS

30. Within 15 days of the date of this order, I order Ms. Farry to pay Ms. Kocchar a total of \$278.28, broken down as follows:
- a. \$273 in debt for the damage deposit, and
 - b. \$5.28 in pre-judgment interest under the COIA.
31. Ms. Kocchar is entitled to post-judgment interest, as applicable.
32. I dismiss Ms. Kocchar's remaining claims.
33. I dismiss Mr. McNamara's claims.

34. 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.

Megan Stewart, Tribunal Member