



Civil Resolution Tribunal

Date Issued: April 28, 2023

File: SC-2022-003689

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Agyemang v. Paul*, 2023 BCCRT 352

BETWEEN:

DANIEL OPOKU AGYEMANG

APPLICANT

AND:

ALBIN PAUL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a roommate dispute. The applicant, Daniel Opoku Agyemang, began renting a room in a shared basement suite from the respondent, Albin Paul, on April 1, 2022. On May 11, Mr. Agyemang advised Mr. Paul he would be moving out on May 15 due to concerns about the suite's cleanliness. Mr. Agyemang says Mr. Paul refused to

refund him \$425 for half a month's rent and improperly kept his \$425 security deposit. He claims a total of \$850.

2. Mr. Paul denies Mr. Agyeman's claim. He says Mr. Agyemang did not give him proper notice he was moving out, so he is not entitled to a rent refund. Mr. Paul also says Mr. Agyemang did not pay his share of the utility bills, which were in addition to the monthly rent, so he only refunded Mr. Agyeman \$230 around June 3. I infer Mr. Paul means he deducted the amount he says Mr. Agyemang owed for utilities from Mr. Agyemang's security deposit and refunded him the balance.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) 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.
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. 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.

ISSUE

9. The issue in this dispute is whether Mr. Agyemang is entitled to the claimed \$850 for half a month's rent and his security deposit.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Agyemang must prove his 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 I find relevant to provide context for my decision. I note Mr. Agyemang did not provide reply submissions despite having the opportunity to do so.
11. The parties agree Mr. Agyemang started renting a room from Mr. Paul in a shared basement suite on April 1, 2022, for \$850 per month. There is no written roommate agreement in evidence. It is undisputed, and I accept, that Mr. Agyemang paid Mr. Paul a \$425 security deposit and that the rent did not include utilities. Based on the limited evidence before me, I find there are no other explicit contractual terms to which the parties agreed.
12. Contracts may also have implied terms. Implied terms are terms the parties did not expressly consider, discuss, or write down but that are based on the parties' common presumed intention. Here, I find it was an implied term of the roommate 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 there was an implied term the parties would maintain reasonable levels of cleanliness to permit the suite's various occupants to live communally (see *Berlin v. Diaz*, 2020 BCCRT 847).

13. On May 11, 2022, Mr. Agyemang texted Mr. Paul to say he would be moving out on May 15. The text in evidence does not detail Mr. Agyemang's reasons for leaving, other than to note he had "problems" and "concerns". However, in the Dispute Notice and in his later submissions Mr. Agyemang says he raised issues about the suite's cleanliness with Mr. Paul from "day one". He says these issues included cigarette butts lying around, dirty communal areas, and a clogged toilet. Mr. Agyemang says he suggested the roommates hire a cleaner but nothing came of his proposal.
14. For his part, Mr. Paul says it was Mr. Agyemang who failed to keep the suite clean. He says one roommate complained to him about Mr. Agyemang leaving dishes in the sink and garbage in the suite, and other roommates made "multiple complaints". However, Mr. Paul did not provide statements from these roommates, though I find it likely he could easily have done so. So, I give no weight to this hearsay evidence.
15. Both parties provided undated photos of the suite's communal areas. Some of Mr. Agyemang's photos show a dirty sink with debris in the background, a bag of what appears to be recycling material on the floor in a corner, cigarette butts on the ground, and a covered takeaway food container on top of a washing machine. Mr. Paul's photos show a relatively tidy kitchen and bathroom. Mr. Paul also submitted a photo he says is of Mr. Agyemang's room when he moved in, which shows it as neat and clean in appearance. Mr. Paul did not provide pictures of the mess he says Mr. Agyemang made in the suite. Given the overall consistency of Mr. Agyemang's

submissions and his photo evidence, I find his account generally more reliable than Mr. Paul's.

16. However, the difficulty for Mr. Agyemang is that I find the photos do not prove the suite was so messy or dirty as to amount to a breach of the implied term that the parties would maintain a reasonable level of cleanliness. I say this because even if Mr. Agyemang found the suite too dirty, the applicable standard is whether an ordinary person would consider the suite to be below an objectively reasonable level of cleanliness in the circumstances. I find while Mr. Agyemang's photos show an amount of dirt or mess some people might find intolerable, on balance, they do not show the suite fell below the applicable objective standard.
17. In any event, I find Mr. Agyemang has not proven Mr. Paul caused any uncleanliness in the suite or acted unreasonably in not hiring a cleaner. This is because there were undisputedly other roommates living in the suite who may have had different views about wanting or needing a cleaner. While Mr. Paul does not say he put Mr. Agyemang's proposal to the other roommates, there is no evidence this was his responsibility or that Mr. Agyemang could not have done so himself.
18. In these circumstances, I find Mr. Paul did not breach the rental agreement's implied term of reasonable cleanliness. So, I find Mr. Agyemang was required to give 1 month's notice of moving out, which he undisputedly did not do. I dismiss his \$425 claim for half a month's rent.
19. I turn to the security deposit. Mr. Paul says Mr. Agyemang did not pay for utilities while he was living in the suite, which Mr. Agyemang does not dispute. So, Mr. Paul says he only returned \$230, which, as noted above, I infer is the amount of the security deposit less Mr. Agyemang's share of the utilities. However, to retain a security deposit, the party making the allegation bears the burden of proving its entitlement to that deposit. Mr. Paul says he has the utility bills he used to calculate Mr. Agyemang's share, but he did not submit them into evidence even though parties are told to submit all relevant evidence. So, I find Mr. Paul has not proven he was entitled to retain any of Mr. Agyemang's security deposit. To the extent Mr. Paul

argues he was entitled to retain a portion of the security deposit because Mr. Agyemang did not clean his room before moving out, I find that unproven.

20. Since Mr. Agyemang does not dispute Mr. Paul returned \$230 to him around June 3, 2022, I find he is entitled to the \$195 balance of his security deposit.

INTEREST, CRT FEES AND EXPENSES

21. The *Court Order Interest Act* (COIA) applies to the CRT. However, Mr. Agyemang expressly stated he did not want to claim interest. So, I make no order for interest.
22. 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. As Mr. Agyemang was partially successful, I find he is entitled to reimbursement of half his CRT fees, which is \$62.50. Mr. Agyemang did not claim any dispute-related expenses.

ORDERS

23. Within 15 days of the date of this order, I order Mr. Paul to pay Mr. Agyemang a total of \$257.50, broken down as follows:
 - a. \$195 in debt as reimbursement for the balance of Mr. Agyemang's security deposit, and
 - b. \$62.50 in CRT fees.
24. Mr. Agyemang is entitled to post-judgment interest, as applicable.
25. I dismiss the rest of Mr. Agyemang's claims.

26. 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