



Civil Resolution Tribunal

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File: SC-2022-004186

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *C.F. v. M.P.*, 2023 BCCRT 418

B E T W E E N :

C.F.

APPLICANT

A N D :

M.P.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. In June 2020, the applicant, C.F., started renting a room in the respondent, M.P.'s house. The applicant says the respondent became violent and abusive towards her, and she was forced to move out of his home for her own safety without bringing most of her belongings. The applicant wants the respondent to return her belongings,

including confidential documents, and to pay her \$5,000 for her losses, which she says includes her security and pet damage deposit.

2. The respondent denies that he was violent or abusive towards the applicant. He says that after the applicant moved out, he put her belongings in a boat outside his house. He says the applicant retrieved most of her belongings from the boat, and the remaining items were left for over a month, after which time he threw them out. The respondent says the applicant's hammock and stand are in his yard, and she is welcome to have them back.
3. The applicant is represented in this dispute by a legal advocate, Keleah Strack, and the respondent represents himself.
4. Given the applicant's allegations of violence and abuse, I have anonymized the parties' names in the published version of this decision to protect their privacy.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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.
8. 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.
9. It is undisputed that on June 1, 2020, the applicant started renting a room in the respondent's house, and that they shared common areas including a kitchen and bathroom. Section 4(c) of the *Residential Tenancy Act* (RTA) says the RTA does not apply to this type of living accommodation. So, I find the applicant's claims fall within the CRT's jurisdiction over debt and damages, rather than the Residential Tenancy Branch's jurisdiction over residential tenancy issues.
10. It is undisputed that the parties were formerly in a romantic relationship, but they lived together for less than 2 years. So, I find they do not meet the definition of spouses in the *Family Law Act*. I find that the *Family Law Act* does not apply to this dispute, and the CRT has jurisdiction to decide the applicant's debt and damages claims.
11. Throughout her evidence and submissions, the applicant alleges that the respondent was violent and abusive towards her. However, the applicant's claims in the Dispute Notice are limited to debt and damages for lost personal property. So, I do not address in this decision whether the respondent was in fact abusive or violent towards the applicant.
12. In her submissions, the applicant makes multiple allegations that are not in the Dispute Notice. She says the respondent did not allow her to go to work, causing her to lose \$6,325.74 in employment income. She also says she paid the respondent rent during times when she was unable to safely live in her room because of his violent behaviour. In a handwritten note in evidence, the applicant indicates that the respondent caused her to lose \$2,625 in welfare cheques, though it is unclear if or

how these cheques relate to any of the above allegations. As noted, none of these allegations are contained in the Dispute Notice, and the applicant did not amend the Dispute Notice to include them. So, I find it would be procedurally unfair to address the merits of these allegations in this dispute.

ISSUES

13. The issues in this dispute are:

- a. Is the respondent required to reimburse the applicant \$575 for her security and pet damage deposits?
- b. Is the respondent required to compensate the applicant for her lost personal property and return her personal property that he still has in his possession?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

Is the respondent required to reimburse the applicant \$575 for her security and pet damage deposits?

15. The applicant says that on June 1, 2020, she paid the respondent \$425 as a security deposit and \$150 as a pet damage deposit. She wants the respondent to reimburse her \$575 for these 2 deposits.

16. The respondent does not dispute that he was paid these 2 deposits on June 1, 2020. He says the applicant and her sister shared the security deposit but provided no evidence to support this allegation.

17. The applicant submitted 2 documents signed by the respondent, including a tenancy agreement, showing she paid him the 2 deposits on June 1, 2020. Neither of these

documents refer to the applicant's sister. I am satisfied that the applicant paid the respondent \$575 in deposits on June 1, 2020.

18. The respondent says the applicant is not entitled to reimbursement of the deposits for several reasons. First, he says the applicant moved out without providing 30 days' notice. However, I find the parties' tenancy agreement does not require 30 days' notice for reimbursement of either of the deposits.
19. The respondent also says the applicant's cats destroyed his carpet and the applicant failed to clean her room before moving out. The applicant denies this and says her room did not have a carpet. The respondent submitted several photos showing damage to a wall and a bathroom in his home, implying the applicant or her cats caused this damage. However, as the landlord, I find the respondent has the burden of proving any damage that would allow him to retain the deposits. I find that without more, the photos are insufficient proof that the applicant or her cats caused any damage to the respondent's house.
20. The respondent also says the applicant failed to return her house and room key before moving out. However, in a December 7, 2020, email to the applicant the respondent said he changed his locks that day, so her key was "nothing but a keepsake now." The respondent does not claim a set-off for the cost of changing the locks. In the circumstances, I am satisfied that the applicant's failure to return the key does not prevent her from being reimbursed for her security deposit.
21. I am satisfied that the applicant is entitled to reimbursement for her security and pet damage deposits. I find the respondent must reimburse the applicant \$425 for the security deposit and \$150 for the pet damage deposit.

Is the respondent required to compensate the applicant for her lost personal property and return her personal property that he still has in his possession?

22. The applicant says that because she moved out of the respondent's house suddenly for her own safety, she left many of her belongings there and was unable to retrieve them. In the Dispute Notice she claims \$5,000 in damages, which includes the pet and security deposit. She also wants the respondent to return her belongings. Having found the applicant is entitled to reimbursement of \$575 for the 2 deposits, I find the maximum amount of her personal property claim is \$4,425. This includes the value of any items that may be returned to her.
23. The applicant says she left confidential documents at the respondent's house, including medical documents, diaries, and photographs. The applicant also says she left the following items at the respondent's house: Nokia smartphone, dresser, mini fridge, quesadilla maker, deep fryer, Nintendo DSX2, 5 videogames, blankets, tapestries, "BOFF" hoody, "Jason Vorhees" jersey, "Snap Backs" bandanas, cannabis flags, "Yellow World Industries" banana board, "GEAR" brand beaker bong, glass extractor tube, "Yocan" vape pen, silicone tray, and "HALLUCIU8" plate (together, the claimed items).
24. The respondent says the only personal property of the applicant's he still has are her hammock and stand. He says they are in his yard, and she is welcome to have them back. So, I order the respondent to return the applicant's hammock and stand according to the terms of my order below.
25. As for the confidential documents and the rest of the claimed items, the respondent says that after the applicant moved out, he put all her belongings in a boat outside his house. He says the applicant retrieved most of the items from the boat, and the remaining items were left for over a month, after which time he threw them out. The applicant disagrees and says the respondent used her belongings to control her throughout their relationship. She says that after she moved out of the respondent's house, he sent conflicting text messages and emails about what he had done with her belongings. She says she was unable to retrieve the confidential documents or the claimed items. For the following reasons, I prefer the applicant's version of events.

26. Evidently the applicant moved out of the respondent's house for an unspecified amount of time in October 2020 but moved back in at some point in the late fall of 2020. She undisputedly moved out of the respondent's house permanently in early December 2020.
27. The communications in evidence show that between December 2 and 6, 2020, the respondent told the applicant he would put her belongings in the boat outside his house. On December 7, 2020, the respondent said in an email, "I put your stuff in the boat when I was drunk last night and I see it's gone today." However, in a December 9, 2020 email to the applicant, the respondent said he moved her belongings to the dumpster, indicating that she had not actually retrieved her belongings. In a December 11, 2020 email the respondent said, "You know I wouldn't touch any of your things... I say things to make you mad so that I get your attention." In a December 12, 2020, email the respondent said, "I have all your clothes here baby I would never throw your sh*t away I said that to get your attention." The communications in evidence show that the respondent threatened to dispose of the applicant's belongings on several more occasions between mid-December 2020 and late January 2021.
28. The applicant says she returned to the respondent's house on an unspecified date with a police escort, but did not find any of her belongings. At one point in his submissions the respondent says the applicant brought the police to his house on multiple occasions. At another point in his submissions, the respondent asked why the applicant did not bring the police to his house if she believed he had her belongings.
29. Overall, I find the respondent's evidence about what he did with the applicant's confidential documents and claimed items to be inconsistent and contradictory. In particular, I find the communications in evidence are inconsistent with the respondent's position that he left the applicant's belongings in the boat for a month and then disposed of them. Overall, I find the respondent's version of events to be

unreliable, and I prefer the applicant's evidence. I find it is more likely than not that the respondent did not return the applicant's confidential documents or claimed items.

30. With respect to the confidential documents, the applicant submitted a text exchange with the respondent from late January 2021 showing that he had at least 6 of her photographs and her diary, which he said he would keep. Given this text message, and the fact that such documents are relatively small and easy to store, I find it is more likely than not that the respondent kept the confidential documents. While these confidential documents are undeniably important to the applicant, I find they have no monetary value, so I find the applicant is not entitled to compensation for them. However, given their importance to the applicant, I find the respondent must return them to her. So, I order the respondent to return to the applicant any of her confidential documents that he has in his possession, including medical documents, diaries, and photographs, in accordance with the terms of my order below.
31. As for the claimed items, I find the applicant has failed to prove that she left the Nokia smartphone, videogames, or bong at the respondent's house. The respondent submitted a December 8, 2020, text from the applicant in which she says she lost her phone. The respondent also submitted text messages showing the applicant asked him for her videogames on September 14, 2020, and he told her she had already taken them. The respondent also submitted an undated text message in which he says someone else has the applicant's bong. The applicant did not respond to any of this evidence in her submissions or explain what happened to these items. The applicant has the burden of proving what items she left at the respondent's house, and I find she has not established that she left the smartphone, videogames, or bong there.
32. With respect to the blanket, in an undated text message the respondent said he had the "West Coast Choppers" blanket, but in a late-October 2020 text message he told the applicant, "she wants it. So it's hers now." Though it is unclear who he is referring to, I find this text shows he did not intend to return the applicant's blanket to her. With respect to the mini fridge, the respondent admits he had it. He says he cleaned out

the rotting food left inside and plugged it in, but it did not work. I am satisfied that the applicant left the blanket and mini fridge at the respondent's house, and that he did not return them to her.

33. The respondent did not specifically refer to the other claimed items in his submissions, except to say that he no longer has them in his possession. He submitted an email statement from his current partner which supports his position. On balance, I find it more likely than not that the respondent disposed of the claimed items, aside from the hammock and stand and confidential documents, which I have already addressed above.
34. I find the applicant is entitled to the replacement cost of the claimed items except for the hammock and stand, which I have ordered the respondent to return, and the smartphone, videogames, and bong, which I have found she has not proven she left at the respondent's house. The applicant provided no receipts for any of the claimed items, though I would not expect her to have kept receipts given the circumstances. The applicant says the glass extractor tube is worth \$50, but she did not provide evidence to support this amount. She did not specify the value of any of the other individual items or provide any evidence of their replacement value. In a handwritten note in evidence, the applicant says the total value of some of the items is \$2,500, but this appears to be an estimate. The applicant does not say that any of the claimed items were new, so I find they were all used at the time she left them at the respondent's house.
35. Given the used condition of the claimed items, on a judgment basis I find the respondent must pay the applicant \$500 for the replacement cost of her lost personal property. I have already found that the confidential documents I ordered the respondent to return to the applicant have no monetary value. The applicant did not provide evidence of the hammock and stand's value, but since it has been at the respondent's house for several years and is not new, I am satisfied that its value is less than the remaining \$3,925 balance of the applicant's personal property claim.

36. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$1,075 owing calculated from December 31, 2020, which is the last month the applicant lived in the respondent's house, to the date of this decision. This equals \$11.50.
37. 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. The applicant did not pay any CRT fees, but I find she is entitled to reimbursement of her reasonable dispute-related expenses. She claims \$150 in dispute-related expenses, though she only submitted evidence of 2 separate registered mail expenses. One was to deliver a letter to the respondent requesting reimbursement of the deposits, with a receipt for \$11.36. The second was to serve the respondent with the Dispute Notice. Though the applicant did not provide a receipt for the second expense, I am satisfied by the first receipt that \$11.36 is the standard rate for a letter-sized piece of registered mail. So, I find the applicant is entitled to \$22.72 in dispute-related expenses.

ORDERS

38. Within 30 days of the date of this order, I order the respondent to make available to the applicant her hammock and stand, and any of the applicant's confidential documents that he has in his possession, including medical documents, diaries, and photographs, according to the following orders:
- a. The applicant or her agent must give the respondent at least 3 days' written notice of a reasonable time and date that is within 30 days of the date of this order when she or her agent will pick up the applicant's personal property.
 - b. The applicant or her agent must pick up the applicant's personal property from the respondent's address indicated in the Dispute Notice, at the time and date specified in the written notice given under the order above, unless the parties agree to a different pick-up location in writing.

39. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,109.22, broken down as follows:

- a. \$575 as reimbursement of the security and pet damage deposits,
- b. \$500 as the replacement cost of her lost personal property,
- c. \$11.50 in pre-judgment interest under the *Court Order Interest Act*, and
- d. \$22.72 for dispute-related expenses.

40. The applicant is entitled to post-judgment interest, as applicable.

41. 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.

Sarah Orr, Tribunal Member