



# Civil Resolution Tribunal

Date Issued: May 30, 2023

Files: SC-2022-005600 and  
SC-CC-2022-007944

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *S.A.S. v. J.M.K.*, 2023 BCCRT 453

B E T W E E N :

S.A.S.

**APPLICANT**

A N D :

J.M.K.

**RESPONDENT**

A N D :

S.A.S.

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This decision involves 2 linked disputes between former roommates about alleged negligence, return of personal property, and an unpaid debt. I find the 2 linked disputes are a claim and a counterclaim, so I have issued a single decision for both disputes.
2. The applicant (and counterclaim respondent), SAS, lived in a home owned by the respondent (and counterclaim applicant), JMK, from November 2021 until February 26, 2022. In dispute SC-2022-005600, the applicant says the respondent acted negligently by failing to address the applicant's safety concerns. The applicant says this caused them psychological duress and mental health issues, leaving them no choice but to suddenly move out from the respondent's home. The applicant claims \$2,500 in damages resulting from the respondent's alleged negligence. The applicant also seeks an order that the respondent return their belongings which were allegedly left at the respondent's home when the applicant moved out or pay \$1,000 for those belongings.
3. The respondent denies she was negligent. She admits the applicant left many items behind. However, the respondent says the applicant failed to retrieve their belongings for almost 8 months and did not allow the respondent to arrange for them to be delivered to the applicant.
4. In SC-CC-2022-007944, the respondent seeks repayment of a \$2,500 loan that she gave to the applicant. The applicant does not deny receiving the \$2,500 but says the respondent should forgive the debt for a number of reasons detailed below. The parties are each self-represented.
5. As described in more detail below, a part of the applicant's claim involves alleged violent threats made by L, the respondent's adult child who is not a party in these disputes. Given these allegations, I have anonymized the parties' names in the published version of this decision to protect their and L's privacy.

## JURISDICTION AND PROCEDURE

6. 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.
7. 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. 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.
8. 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.
9. 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.

10. As mentioned, this decision is about 2 linked disputes. The separate dispute numbers are due to the CRT's handling of the parties' dispute applications. However, as noted above, I find the 2 disputes are a claim and counterclaim involving the same parties. So, in making my decision about the parties' claims in each dispute, I have relied on the evidence and submissions submitted in these disputes as a whole. In other words, I have relied on the evidence and submissions in dispute SC-2022-005600 in deciding the claims in dispute SC-CC-2022-007944 and vice versa.
11. As noted, the parties are former roommates. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, RTA section 4(c) says the RTA does not apply to living accommodations where the homeowner shares a bathroom or kitchen with the tenant. Here, the parties undisputedly shared a kitchen. So, I find the RTA does not apply and these disputes are within the CRT's small claims jurisdiction over debt and damages.
12. Next, in their written argument, the applicant makes some allegations of harassment against the respondent. The applicant does not claim a remedy with respect to any alleged harassment. However, to the extent the applicant's claims turn on alleged harassment, I note there is no recognized tort of harassment in British Columbia.
13. Lastly, the applicant provided some evidence in SC-CC-2022-007944 that was submitted in an "ics" file format that I was unable to open. In their written argument, the applicant says these files relate to the issue of interest on a separate loan that the respondent mentions in her submissions she made to the applicant but does not seek repayment for in these disputes. So, based on the applicant's description of these files, I decided I did not need to see these documents as they are not relevant to the specific issues I must decide in these disputes. Accordingly, and bearing in mind the CRT's mandate that includes speed and efficiency, I did not ask the applicant to resubmit these files.

## **ISSUES**

14. The issues in this dispute are:
- a. Is the applicant entitled to \$2,500 in damages for the respondent's alleged negligence?
  - b. Should the CRT order the respondent to return the applicant's personal property or award damages for missing or damaged items?
  - c. Must the applicant repay the \$2,500 loan to the respondent?

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities (meaning "more likely than not"). The respondent must prove her counterclaims to the same standard. I have reviewed all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
16. The following facts are undisputed. Sometime in November 2021, the applicant moved into the respondent's house and lived there until February 26, 2022. During this time, the applicant did not pay the respondent rent. Instead, the parties agreed that the applicant would give the respondent private yoga lessons in place of paying rent.
17. On January 18, 2022, police escorted L to the respondent's home. The following evening, there was an altercation between L and the respondent. The respondent says the altercation was not physical, but it is undisputed that L made threats of harm towards the respondent and made comments of a sexual nature (not about the respondent). It is undisputed that L did not make any direct threats towards the applicant, and that the applicant was in a separate room when the altercation happened. However, the applicant says they heard the entire altercation and intervened at the end. The next day, the applicant, with the respondent's consent,

informed the police about the altercation and police escorted L to the hospital where L stayed until at least February 25, 2022. It is not clear from the evidence if L returned to the respondent's home on or after February 26. As noted above, on February 26, 2022, the applicant undisputedly moved out.

***Is the applicant entitled to \$2,500 in damages for the respondent's alleged negligence?***

18. The applicant alleges that the respondent failed to ensure their safety in the respondent's home after L's January 19 altercation with the respondent. In particular, the applicant says the respondent refused to address the applicant's safety concerns by refusing to ask L various questions about the altercation. These questions included whether L had any recollection of the altercation, whether L felt remorse, whether the altercation was linked to L's alleged use of shatter (a cannabis extract) and if so, if L would quit using shatter. Notably, the applicant does not allege any negligence on the respondent's part with respect to the January 19 altercation itself. So, my findings here are limited to the applicant's allegation that the respondent failed to address the applicant's safety concerns by undisputedly refusing to ask L the questions set out above.
19. To prove negligence, the applicant must show that the respondent owed them a duty of care, breached the standard of care, and that the applicant sustained damage as a result of the respondent's breach of the standard of care (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3).
20. I accept that the respondent owed the applicant a duty of care as a roommate. Here, I find the reasonable standard of care was for the respondent to make best efforts to ensure the home was a reasonably safe environment for everyone living there. For the reasons that follow, I find the applicant's negligence claim must fail.
21. First, I am not satisfied that the respondent's failure to ask L the questions the applicant wanted answered was a breach of the standard of care. As noted above, it is unclear from the evidence before me if L was expected to return to the respondent's

home after they were released from the hospital. In any event, I infer from the applicant's submissions that the applicant wanted L to answer these questions to ensure the applicant's safety if L did return to the home. However, I cannot find based on the evidence before me that the respondent's undisputed failure to ask L these questions meant the respondent was not making best efforts to ensure safety in her home. On balance, I find the evidence does not establish that the applicant did anything to breach the standard of care to ensure a reasonably safe home environment.

22. Next, even if I were to find the respondent did breach the standard of care, I would dismiss the applicant's negligence claim in any event because I find the applicant has failed to prove their damages. The applicant appears to claim the respondent's negligence caused them psychological duress, forcing them to suddenly move out on February 26 and quit their job, resulting in income loss. However, the applicant provided no evidence about how much they were earning before they quit, or how much income they allegedly lost.
23. To the extent the applicant also seeks damages for mental distress allegedly caused by the respondent, I find this also unproven. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, a non-binding but persuasive CRT decision, for a claim for mental distress to be successful, there must be medical evidence supporting the mental distress. Here, the applicant provided no medical evidence of this kind. So, I find the applicant's claim for mental distress damages unproven. For those reasons, I dismiss the applicant's negligence claim.

***Should the CRT order the respondent to return the applicant's personal property or damages in lieu for missing or damaged items?***

24. The applicant undisputedly left behind many of their belongings in the respondent's home when they moved out on February 26, despite the respondent asking by text message that the applicant take everything with them or leave what they could not take on the porch. Based on the parties' submitted evidence and written arguments, it appears the applicant received the majority of their personal belongings back

sometime in October 2022. However, the applicant says that the respondent did not return a cast iron pan, a Dyson vacuum, a large container of coconut oil, approximately 85 CDs, binoculars, a frying pan and 2 saucepans.

25. The applicant also says the respondent refused to let the applicant pack their own belongings, which resulted in some items being lost or damaged. In particular, the applicant says the respondent packed the applicant's deceased father's vintage scarf in a bag that had an open pen in it that exploded and discoloured the scarf. In addition, the applicant says the respondent's packing damaged the applicant's salad bowl, dance sword, and a few other undescribed items. I note here that the applicant did not expressly claim monetary damages in the Dispute Notice for items the respondent allegedly damaged. So, I am treating this as a set-off to the respondent's counterclaim. More on this below.
26. I will first address the applicant's claim for the respondent to return the listed missing items. First, I note that in the Dispute Notice, the applicant says their unreturned belongings are worth about \$10,000 but claims only \$1,000 if the items are not ordered to be returned. The CRT's small claims monetary limit is \$5,000 so I would not be able to order the return of belongings that are valued over this monetary limit. In any event, given my findings below, nothing turns on the applicant's \$10,000 stated value of the allegedly unreturned items.
27. The respondent did not directly address the specific items that the applicant says are missing but says that after the applicant moved out, she moved all of the applicant's belongings to an outside covered storage area under tarps. From this, I infer the respondent's position is that none of the applicant's belongings remained in the house, and that she does not have any of the items the applicant says were not returned. From the respondent's submissions I also infer that she suggests that if any items are missing, they may have been taken by others during the time the applicant's belongings were stored outside. The applicant provided no evidence to show that the listed items they want returned are still in the respondent's possession. Accordingly, I do not find an order for the respondent to return the listed items appropriate here.



28. Does the applicant have any legal entitlement to monetary damages for the allegedly missing items? I find the law of bailment applies in this situation. A bailment is the temporary transfer of property from the “bailor” (in this case, the applicant), to the “bailee” (in this case, the respondent). I find the evidence shows that the respondent did not want to store the applicant’s belongings. The evidence also shows that the respondent repeatedly followed up with the applicant about removing the applicant’s belongings from the respondent’s home. So, I find the respondent was an involuntary bailee as she had the applicant’s belongings on her property, against her will (see *MacAulay v. Meise*, 2020 BCPC 135 at paragraph 73).
29. Involuntary bailees are generally held liable only for reckless or intentional damage and have no duty to take any positive steps to preserve or protect the items against theft, vandalism, or weather damage (see *MacAulay* at paragraph 85). The onus is on the applicant to prove the respondent was reckless, and I find the applicant has not done so here. Given the nature of the applicant’s possessions, largely household and personal items of relatively little monetary value, I find it was not unreasonable for the respondent to have stored the applicant’s belongings outside under cover. In addition, given the applicant failed to retrieve their belongings for almost 8 months, and the lack of any evidence to show that the respondent kept the items, I cannot find the respondent is responsible for the missing items. So, I find the applicant is not entitled to any damages for the missing items.
30. Similarly, I find the respondent is, for the most part, also not responsible for the items the applicant says were damaged when returned. While photographs in evidence show that the bins and bags packed by the respondent with the applicant’s belongings were disorganized and contained some garbage items, I do not find the evidence establishes that the respondent recklessly handled the applicant’s belongings or intentionally caused damage. The one exception is the scarf. I find photographs in evidence show the scarf damaged with ink stains. Since the respondent does not dispute she packed the scarf in a bag with an open pen, I accept that she did and find it was reckless for her to do so. The applicant provided no evidence of the scarf’s value, which I infer was decades old based on the applicant’s submissions. So, given

the lack of any evidence of value, on a judgment basis I find the applicant is entitled to a nominal set-off amount of \$5 for the damaged scarf.

***Must the applicant repay the \$2,500 loan to the respondent?***

31. As noted above, the applicant does not dispute that the respondent loaned them \$2,500 in November 2021. However, the applicant says that the debt should be absolved or forgiven for various reasons. Those reasons include the applicant allegedly spent \$500 from the loan to feed the respondent and her children, that the applicant allegedly spent “hundreds of hours” doing housekeeping, making meals, and caring for the respondent’s dog, and that the respondent allegedly mistreated them in a number of ways. The applicant further says the debt should be forgiven because the respondent damaged their personal belongings. However, I have already dealt with the issue of the allegedly damaged belongings above so I will not address it further here.
32. The respondent disagrees that the debt should be forgiven. She refers to a July 31, 2022 email in evidence where the applicant said that they intended to repay the \$2,500 and says that the applicant should be held to that admission.
33. I find the applicant essentially alleges that they are entitled to a set-off against the \$2,500 debt. As the person claiming it, the applicant has the burden of proving that they are entitled to a setoff. For the reasons that follow, I find the applicant has not proven entitlement to any set-off other than the \$5 for the damaged scarf discussed above.
34. From the parties’ submissions, it is clear both did gratuitous tasks for the other as friends, and as roommates. There is no suggestion that the parties had any agreement that the gratuitous tasks the applicant did to assist the respondent while living in her home would reduce the \$2,500 debt. So, I find the applicant is not entitled to any set-off for the alleged housekeeping, dog-sitting, and other tasks they did while living with the respondent. Similarly, while the applicant may have spent money from the \$2,500 to feed the respondent, they did not provide any evidence of this, or

evidence that the respondent agreed to deduct any amount spent on food for the respondent from the total owed. Further, other than the applicant's assertions, I find there is no evidence that shows the respondent mistreated the applicant as alleged.

35. Since the applicant has failed to prove that they are entitled to any setoff in addition to the \$5 for the damaged scarf, and otherwise admits the debt, I find the applicant owes the respondent the outstanding \$2,500, less the \$5. So, I find the applicant must pay the respondent \$2,495.
36. The *Court Order Interest Act* (COIA) applies to the CRT. I find the \$2,500 loan was a demand loan and the Dispute Notice for the counterclaim is the respondent's first clear repayment demand. So, I find respondent is entitled to pre-judgment interest on the \$2,495 from November 2, 2022, the date the Dispute Notice for the counterclaim was issued, to the date of this decision. This equals \$52.60.
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. I find the applicant was largely unsuccessful in these disputes, so I dismiss their claim for reimbursement of their paid CRT fees. As the more successful party, I find the respondent is entitled to reimbursement of \$125 for the CRT fees she paid.

## **ORDERS**

38. Within 30 days of the date of this decision, I order the applicant to pay the respondent a total of \$2,672.60, broken down as follows:
  - a. \$2,495 in debt,
  - b. \$52.60 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.
39. The respondent is entitled to post-judgment interest, as applicable.

40. I dismiss the applicant's claims in dispute SC-2022-005600.

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.

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Nav Shukla, Tribunal Member