



# Civil Resolution Tribunal

Date Issued: June 26, 2023

File: SC-2022-007354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tsai v. Chen*, 2023 BCCRT 535

BETWEEN:

MENG-SHAN TSAI

**APPLICANT**

AND:

YOU LI CHEN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about a rental agreement. The applicant, Meng-Shan Tsai, rented out a room in her home to the respondent, You Li Chen, under a 6-month fixed-term contract.

2. Mrs. Tsai says Ms. Chen ended the rental contract early without sufficient notice. Mrs. Tsai claims \$900 for unpaid rent and a \$900 contractual penalty for ending the rental early, for a total of \$1,800.
3. Ms. Chen says she gave sufficient notice to end the contract. She says that Mrs. Tsai kept her \$450 damage deposit, so she does not owe Mrs. Tsai any rent. Ms. Chen did not file a counterclaim, so I have treated her \$450 damage deposit claim as a set-off. Ms. Chen also says Mrs. Tsai misrepresented important aspects of the rental and breached the rental contract, so she should not be required to pay the penalty for ending the contract early.
4. Both parties are self-represented in this dispute.

## **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. Ms. Chen undisputedly rented a room in Mrs. Tsai's home, and the parties shared a kitchen. Section 4(c) of the *Residential Tenancy Act* (RTA) says the RTA does not apply to this type of living accommodation. So, I find Mrs. Tsai's claims fall within the CRT's jurisdiction over debt and damages, rather than the Residential Tenancy Branch's jurisdiction over residential tenancy issues.

## **ISSUES**

10. The issues in this dispute are:
  - a. Does Ms. Chen owe Mrs. Tsai \$900 in rent?
  - b. Does Ms. Chen owe Mrs. Tsai \$900 for ending the contract early?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, as the applicant, Mrs. Tsai 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.

### ***Does Ms. Chen owe Mrs. Tsai \$900 in rent?***

12. On August 11, 2022, the parties signed a rental contract for a 6-month term from September 1, 2022 to February 28, 2023. Ms. Chen's rent was \$900 per month, due on the first day of each month. Under the contract, Ms. Chen paid Mrs. Tsai a \$450 damage deposit which Mrs. Tsai has not returned to her. None of this is disputed.

13. On September 15, 2022, Ms. Chen gave Mrs. Tsai written notice that she would move out on October 15, 2022. Later that day, Ms. Chen revised the written notice to a move-out date of October 31, 2022. Ms. Chen moved out on October 1, 2022, and did not pay Mrs. Tsai rent for the month of October 2022. Again, none of this is disputed.
14. Mrs. Tsai says Ms. Chen owes her \$900 in rent for October 2022. Ms. Chen says she owes only \$450 in rent from October 1, 2022, to October 15, 2022, which was the move-out date in her original written notice to Mrs. Tsai. She says Mrs. Tsai forced her to revise her written notice to a move-out date of October 31, 2022, which was never her intention. Ms. Chen claims a set-off for her \$450 damage deposit, so she says she does not owe Mrs. Tsai any rent.
15. The contract states, “You will need to give the landlord at least 1 month written notice before moving out. (ex: moving on April 30, give written notice on March 31<sup>st</sup>)”. The contract does not state anything about rent for partial months, or rent reimbursement if Ms. Chen moved out mid-month. As noted, rent was due on the first of each month. I find this means termination notice must be given by the end of a calendar month to be effective at the end of the following calendar month. I find this is consistent with rent being due on the first of the month, and each rental period being a full calendar month. Given this analysis, I find it does not matter whether the move-out date in Ms. Chen’s written notice was October 15 or 31, 2022. Ms. Chen undisputedly gave Mrs. Tsai written notice on September 15, 2022, and moved out on October 1, 2022. I find Ms. Chen breached the contract by failing to provide 1 month’s written notice. I find that under the contract, Ms. Chen was required to pay Mrs. Tsai \$900 in rent on October 1, 2022.
16. I turn now to Ms. Chen’s set-off claim. An equitable set-off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue. An equitable set-off may be applied when the desired set-off is connected closely enough with an applicant’s claimed rights that it would be unjust to proceed without permitting one (*Jamieson v.*

*Loureiro*, 2010 BCCA 52 at paragraph 34). I find that an equitable set-off applies here because the mutually alleged debts arise from the same circumstances under the parties' contract. Normally, since Ms. Chen is claiming the set-off, she would be required to prove her entitlement to any set-off amount. However, since the set-off is about a damage deposit, as the landlord I find Mr. Tsai must prove any damage to the rental property which entitles her to keep the damage deposit (see *Buckerfields v. Abbotsford Tractor and Equipment*, 2017 BCPC 185 at paragraph 5).

17. The contract says that on the last day of the rental term the parties would check the rental area to ensure everything was in its original condition and that Ms. Chen had cleaned the rental space, at which point Mrs. Tsai would return the deposit. The parties undisputedly did not do a walk-through of the rental space before Ms. Chen moved out. Mrs. Tsai says Ms. Chen left her bedroom and bathroom unclean, and she broke the blinds in her bedroom. Mrs. Tsai says she is willing to return any amount of the damage deposit remaining after she pays for cleaning and replacing the blinds. She provided no evidence of those costs.
18. Mrs. Tsai says Ms. Chen left grease and a black stain in the bathtub, a yellow stain in the sink, and hair on the floor mats in the bathroom. However, Mrs. Tsai provided no photos or other evidence to support these allegations. Ms. Chen submitted photos and videos taken immediately before she moved out which I find do not show any of these allegations and show the rental area was generally clean and tidy. I am satisfied that there is no basis for Mrs. Tsai to withhold Ms. Chen's damage deposit because the rental space was left uncleaned.
19. The blinds in Ms. Chen's bedroom undisputedly broke at some point during her rental. The photos in evidence show 4 of the blind panels are broken off at one end. Mrs. Tsai says that on the day Ms. Chen moved in she showed her how to use the blinds and they worked without issue. Ms. Chen says the blinds were in poor condition when she moved in and were very brittle, and they broke the first time she used them. Given the otherwise good condition of the rental area when Ms. Chen moved out, and Mrs. Tsai's lack of evidence on this point, I find the blinds likely broke through regular wear

and tear. So, I find Mrs. Tsai has not proven that she is entitled to keep any amount of the damage deposit because of the broken blinds.

20. I find Mrs. Tsai has not established that she is entitled to keep any amount of Ms. Chen's damage deposit. I order Ms. Chen's \$450 damage deposit to be set off from the \$900 she owes Mrs. Tsai for rent. So, I order Ms. Chen to pay Mrs. Tsai \$450 in rent for October 2022.

***Does Ms. Chen owe Mrs. Tsai \$900 for ending the contract early?***

21. The parties agree that the contract included a penalty of a month's rent, or \$900, for ending the contract early. Ms. Chen undisputedly ended the contract early by moving out on October 1, 2022. Ms. Chen says Mrs. Tsai misrepresented important details about the rental and breached the rental contract, and so she should not have to pay the \$900 penalty. For the following reasons, I find Ms. Chen must pay Mrs. Tsai \$900 for ending the contract early.
22. While Ms. Chen does not explicitly say so, I find part of her allegation is that Mrs. Tsai negligently misrepresented the location and exclusivity of the bathroom, the access to the kitchen, and the accessibility of the parking space. To prove negligent misrepresentation, Ms. Chen must establish that Mrs. Tsai owed her a duty of care, Mrs. Tsai negligently made untrue, inaccurate, or misleading statements which induced Ms. Chen to sign the rental contract, and Ms. Chen incurred damages as a result (see *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC)). As Ms. Chen's prospective landlord, I find Mrs. Tsai owed her a duty of care. However, for the following reasons, I find Ms. Chen has not established that Mrs. Tsai negligently made any untrue, inaccurate, or misleading statements that induced Ms. Chen to sign the rental contract.
23. First, Ms. Chen says Mrs. Tsai did not tell her that her bathroom was on a different floor than her bedroom. Ms. Chen undisputedly did not view the unit before signing the contract, but the parties undisputedly exchanged text messages and had a video call. Ms. Chen submitted some of these text messages but most of them are not in

English. There are some English words throughout these messages, but I find I cannot determine their context in the circumstances. So, bearing in mind the CRT's rules that require evidence to be submitted in English, I have not considered the text of these messages in my decision.

24. Mrs. Tsai says she showed Ms. Chen during the video call that the bathroom was on a separate floor, but Ms. Chen denies this. Ms. Chen says the photo collage Mrs. Tsai sent her in their text exchange made it seem like the bathroom was connected to the bedroom. I disagree. I find each photo in the text exchange is clearly separate, and I cannot determine from the photos alone where in the home the bathroom or bedroom are located. I find Ms. Chen has not established that Mrs. Tsai misrepresented the location of her bathroom.
25. Ms. Chen also says Mrs. Tsai told her the bathroom was for her own private use, but that Mrs. Tsai and her guests could have used it because it is located off a shared space. Mrs. Tsai says she had no reason to access Ms. Chen's bathroom because she has her own ensuite bathroom, and no visitors came over during the time Ms. Chen lived there. In the absence of evidence that anyone other than Ms. Chen actually used her bathroom during her rental, I find Ms. Chen has failed to establish that Mrs. Tsai misrepresented that the bathroom was for Ms. Chen's exclusive use.
26. Ms. Chen also says Mrs. Tsai told her they would share the kitchen, but the kitchen was barely usable because of the mess Mrs. Tsai left and because of insufficient fridge space. She says Mrs. Tsai did not clean the kitchen after using it and left dirty dishes and garbage on the counter and in the sink for days. She says they both used the dishwasher to dry dishes but it was always full so she could never find room to dry her own dishes. She also says Mrs. Tsai refused to give her sufficient fridge space and repeatedly placed her own food on top of Ms. Chen's. Ms. Chen submitted many photos showing what I find to be a messy and cluttered kitchen, a full dishwasher, and a full fridge.
27. Mrs. Tsai says she generally cleaned up after herself but that sometimes when she worked late, she did not clean the kitchen until the next morning so as not to disturb

Ms. Chen late at night. She says she left clean pots and pans out on the stove so Ms. Chen could use them. She says Ms. Chen had the exclusive use of a mini fridge outside her bedroom, and she gave Ms. Chen the space she asked for in the main fridge.

28. I find the evidence shows nothing more than lifestyle differences between roommates. I find Ms. Chen's evidence does not establish that the kitchen was unusable such that Mrs. Tsai misrepresented that the rental had access to a working kitchen.
29. Next, Ms. Chen says Mrs. Tsai promised her an outdoor parking spot, but it was located between the garage door and a large vehicle. Ms. Chen does not explain why this parking spot was inadequate or how Mrs. Tsai misrepresented the availability or accessibility of her parking spot.
30. Overall, I find Ms. Chen has failed to establish that Mrs. Tsai negligently misrepresented anything about the rental.
31. In her submissions Ms. Chen also makes several allegations that Mrs. Tsai breached the parties' contract. I infer she says she is not required to pay Mrs. Tsai the \$900 penalty because of these alleged breaches.
32. Ms. Chen says Mrs. Tsai often watched TV, sang, and talked loudly until 1:00 a.m., despite the contract stating that quiet time started at 11:00 p.m. daily. Mrs. Tsai denies this. Ms. Chen bears the burden of proving her claim. In the absence of any supporting evidence that Mrs. Tsai made unreasonable noise at night, I find Ms. Chen has failed to prove Mrs. Tsai breached the contract in this regard.
33. Ms. Chen also says Mrs. Tsai occupied the entire common area (kitchen, living room, and dining area) from 5:00 p.m. to 1:00 a.m. every night, so Ms. Chen did not feel comfortable using that space. However, Ms. Chen provided no evidence to support her allegation, and even if proven, I find the contract does not limit Mrs. Tsai's use of the common areas in her home.



34. Ms. Chen says the water heater was not working properly for several days in early September 2022, and she could only have lukewarm showers during that time. She says she spoke to Mrs. Tsai about it on 3 occasions, but Mrs. Tsai did not have it repaired at all. While Mrs. Tsai does not specifically dispute this, I find Ms. Chen's submissions are inconsistent because she said the water heater was broken for only several days, but also says Mrs. Tsai never repaired it. Without supporting evidence, I find Ms. Chen has not established that Mrs. Tsai breached the contract by failing to have the water heater repaired.
35. Ms. Chen also says Mrs. Tsai failed to tell her the microwave was broken. Mrs. Tsai admits the microwave broke while Ms. Chen was living in her home, but she says she bought a new one the day after Ms. Chen told her the original one had broken. Ms. Chen does not dispute this. I find Ms. Chen has not proven Mrs. Tsai breached the rental contract by failing to provide a working microwave.
36. In summary, I find Ms. Chen has not established that Mrs. Tsai made any misrepresentations about the rental or breached the contract. So, I find Ms. Chen is required to pay Mrs. Tsai the \$900 penalty for ending the contract early.
37. The *Court Order Interest Act* applies to the CRT. Mrs. Tsai is entitled to pre-judgment interest on the \$1,350 owing calculated from October 1, 2022, which is the date Ms. Chen ended the contract, to the date of this decision. This equals \$4.46.
38. 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. Since Mrs. Tsai was generally successful, I find she entitled to reimbursement of \$125 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

39. Within 30 days of the date of this order, I order Ms. Chen to pay Mrs. Tsai a total of \$1,479.46, broken down as follows:

- a. \$450 in rent,
- b. \$900 as a penalty under the contract,
- c. \$4.46 in pre-judgment interest under the *Court Order Interest Act*,
- d. \$125 in CRT fees.

40. Mrs. Tsai 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.

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Sarah Orr, Tribunal Member