



# Civil Resolution Tribunal

Date Issued: July 6, 2023

Files: SC-2022-005045 and  
SC-CC-2022-007199

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Costey v. Garcia*, 2023 BCCRT 569

B E T W E E N :

CHRISTOPHER COSTEY

**APPLICANT**

A N D :

JOSHUA GARCIA

**RESPONDENT**

A N D :

CHRISTOPHER COSTEY

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. This is a roommate dispute. This decision relates to 2 linked disputes with the same parties that I find collectively consist of a claim and a counterclaim. So, I have issued a single decision for both disputes.
2. Christopher Costey, the applicant in dispute SC-2022-005045 (5045) and counterclaim respondent in dispute SC-CC-2022-007199 (7199), rented a room in an apartment from the respondent (and counterclaim applicant) Joshua Garcia, who leased the apartment from Equitable Real Estate Investment Corporation Ltd. (Equitable). Equitable is not a party in these disputes.
3. In the Dispute Notice for dispute 5045, Mr. Costey named JWS as a second respondent. JWS did not file a Dispute Response and I have not included them as a respondent in the style of cause above, as discussed further below. Mr. Costey says both Mr. Garcia and JWS made misrepresentations about the apartment when they advertised the apartment and during their interviews with Mr. Costey. Mr. Costey also alleges Mr. Garcia and JWS interfered with his quiet enjoyment during the time they were roommates. So, he seeks \$2,900 in damages.
4. Mr. Garcia denies making any misrepresentations or interfering with Mr. Costey's quiet enjoyment. In the counterclaim, Mr. Garcia seeks \$734.33 in unpaid rent for August 2022 and \$160 for Mr. Costey's share of the internet bills during his tenancy. Mr. Costey denies he owes Mr. Garcia anything. He says Mr. Garcia told him not to pay August's rent and also decided not to charge him for the monthly internet fees.
5. Mr. Costey and Mr. Garcia are both self-represented.

## **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 "he said, he 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.

### ***Preliminary Issues***

10. First, I note residential tenancy disputes are generally 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 these ones. So,

I find these 2 linked disputes fall within the CRT's small claims jurisdiction for debt and damages under CRTA section 118.

11. Next, as mentioned, this decision is about 2 linked disputes. Mr. Costey only submitted documentary evidence in dispute 5045 and Mr. Garcia only submitted documentary evidence in dispute 7199. However, since I find the 2 disputes consist of a claim and counterclaim, I have considered the evidence and submissions submitted by the parties collectively in both disputes in coming to my decision below.
12. Lastly, as noted above, Mr. Costey named JWS as a respondent in dispute 5045 and they have not filed a Dispute Response. According to the CRT's confirmation of service form, the CRT served JWS with a copy of the Dispute Notice on August 31, 2022 by mailing it to the address provided by Mr. Costey for JWS. Under CRT rule 2.10(2), a mailed Dispute Notice is considered served on the 15<sup>th</sup> day after the notice is given to the CRT's mail service provider, unless the CRT receives satisfactory information that the respondent did not receive the mailed Dispute Notice. JWS did not file a Dispute Response and so, if they had been served, would technically be in default. However, for the reasons that follow, I find they have not been properly served.
13. Based on the evidence before me, I find that the address Mr. Costey provided the CRT for JWS is the same address where Mr. Costey, Mr. Garcia, and JWS all lived together in 2022. Mr. Costey started this CRT dispute in August 2022, after JWS had undisputedly already moved from the address Mr. Costey provided for service. In his evidence submissions, Mr. Garcia says that he spoke to JWS and they said they never received an email from the CRT. Given that Mr. Costey provided no email address for JWS and the address where the CRT mailed the Dispute Notice is an address where I find JWS no longer resided, I am not satisfied that JWS received the Dispute Notice. I pause here to note that Mr. Garcia's evidence includes a witness statement from JWS. However, there is nothing in this witness statement that suggests that JWS has received the Dispute Notice or is otherwise aware that Mr. Costey has named them as a respondent in dispute 5045. So, while JWS did not file

a Dispute Response, I find they were not properly served with the Dispute Notice under the CRT rules. This means they are not in default. Further, since JWS was not properly served, they are not a party to this dispute. For that reason, I have not included JWS in the style of cause above.

## **ISSUES**

14. The issues in this dispute are:

- a. Did Mr. Garcia make misrepresentations about the apartment to Mr. Costey?
- b. If so, what damages if any, is Mr. Costey entitled to for the misrepresentations?
- c. Did Mr. Garcia breach the parties' contract by interfering with Mr. Costey's quiet enjoyment during his tenancy?
- d. If so, what damages, if any, is Mr. Costey entitled to for this breach?

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, Mr. Costey as the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). Mr. Garcia must prove his counterclaims to the same standard. I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

### ***Background***

16. The parties disagree about whether or not Mr. Garcia was Mr. Costey's "landlord". For the reasons that follow, I find the parties were roommates and while Mr. Garcia was not a "landlord" as defined in the RTA, the parties had an enforceable contract setting out the terms of their roommate agreement.

17. Mr. Garcia undisputedly had a lease for the apartment with his landlord, Equitable. The evidence shows Mr. Costey completed an application for tenancy form after he

moved in, presumably at Equitable's request, which Equitable's agent signed on April 14, 2022. However, it is undisputed that Mr. Costey was not a party to the lease between Equitable and Mr. Garcia and at no point paid rent to Equitable directly. Mr. Costey made all of his rent payments to Mr. Garcia.

18. On March 24, 2022, Mr. Garcia and Mr. Costey signed a standard-form RTB rental contract. Notably, pages 4 and 5 of the standard-form contract in evidence are missing. It is unclear to me from the parties' submissions whether the parties intended to include the missing pages as part of their contract, if they were purposely excluded at the time the contract was signed, or if the pages went missing after the contract was signed. In any event, since the parties did not provide copies of the missing pages, and since neither party specifically argues that the terms on the missing pages were included in their contract, I find the parties' contract excluded pages 4 and 5 of the RTB standard form contract. While the RTA does not apply here, to the extent the parties incorporated RTA terms into their agreement by using the RTB form (less pages 4 and 5), those are contractual terms that bind the parties.
19. Based on the contract in evidence, I find Mr. Costey's month-to-month tenancy began on April 1, 2022. The rent was \$734.33 a month, payable on the 1<sup>st</sup> day of each month and Mr. Costey agreed to pay 1/3 of the hydro and internet bills. Mr. Costey also undisputedly paid a \$367 damage deposit.
20. JWS was undisputedly already residing at the apartment when Mr. Costey moved in on April 1, 2022 and moved out sometime in July 2022. JWS owned a dog, Milo, that resided with him at the apartment. The evidence shows, and it is undisputed, that Equitable had a "no pets" policy. Mr. Garcia and Mr. Costey both resided at the apartment until August 31, 2022. Mr. Costey undisputedly did not pay rent for August.

### ***Alleged Misrepresentation***

21. Mr. Costey's misrepresentation claims appear to be two-fold. First, he alleges that Mr. Garcia said that Milo was JWS's relative's dog and would sometimes visit. Mr. Costey says he realized over time that Milo was actually JWS's dog and lived at the

apartment. Second, Mr. Costey alleges that Mr. Garcia misrepresented the apartment's condition by having it clean during his initial visits to view the apartment. Mr. Costey alleges that the apartment was consistently messy after he moved in.

22. A negligent misrepresentation occurs when someone carelessly makes an untrue, inaccurate or misleading statement. A fraudulent misrepresentation occurs when someone knowingly or recklessly makes a false statement. Either way, in order to be successful, Mr. Costey must prove that he relied on Mr. Garcia's alleged misrepresentations and that reliance resulted in damages to him.
23. As noted, Mr. Garcia denies making any misrepresentations. Mr. Garcia says that he and his other former roommates explained to Mr. Costey before he moved in that Milo lived at the apartment, despite Equitable's no pets policy. Mr. Garcia says that Mr. Costey met Milo 2 times before he moved in. The first time was when he met with AK (who resided at the apartment before Mr. Costey moved in) and JWS and then at a later visit when Mr. Garcia and JWS met with Mr. Costey. Mr. Garcia says AK told him that during the first meeting, AK explained to Mr. Costey that many people in the building had dogs, even though they were not allowed. Mr. Garcia's evidence includes a hand-written statement from AK in which AK says that they showed Mr. Costey the apartment in March 2022 and during the interview, Mr. Costey met Milo and "all information was disclosed in full". During the second meeting, Mr. Garcia says Milo was there and he verbally explained the situation with the dog to Mr. Costey. Mr. Costey says Milo was not there when he visited the apartment before he moved in. On balance, I prefer AK's evidence that Mr. Costey met Milo during the March 2022 meeting because I find AK is a neutral witness.
24. While Mr. Costey says Mr. Garcia misrepresented the situation about Milo to him, I find this unproven on the evidence before me. First, I note that Mr. Costey says in his Dispute Response to Mr. Garcia's counterclaim that he has "transcribed all communications" between himself and Mr. Garcia to show that Mr. Garcia is dishonest. However, Mr. Costey provided no such transcriptions as evidence. When a party fails to provide relevant evidence without reasonable explanation, the CRT

may draw an adverse inference. An adverse inference is where the CRT assumes that a party failed to provide relevant evidence because the missing evidence would not support their case or does not actually exist. I find that an adverse inference is appropriate here. I find that the transcriptions either do not exist or if there are transcriptions, they do not show any misrepresentations made by Mr. Garcia.

25. Overall, I find there is no supporting evidence that shows that Mr. Garcia made the alleged misrepresentations. In fact, I find the evidence suggests that Mr. Costey likely knew about the no pets policy and that Milo lived at the apartment before he moved in. For example, in a July 4 text message to Mr. Garcia, Mr. Costey said “I told you guys at the very beginning of my tenancy that I wouldn’t say anything to anyone about the dog and that’s exactly what I did.” Interestingly, after the parties exchanged further messages where Mr. Garcia later said that he would prefer to find new roommates instead of continuing to live with Mr. Costey, Mr. Costey then said that he was not told about the dog and no pets allowed until after he signed the contract. Given Mr. Costey’s conflicting statements, and the lack of any evidence showing otherwise, I find it unproven that Mr. Garcia misrepresented the situation about Milo and Equitable’s no pets policy before Mr. Costey agreed to move in.
26. I am also not satisfied that Mr. Garcia made any misrepresentations about the apartment or how clean it was typically kept. While Mr. Costey provided some photographs and videos that show the apartment in a messy state, there is no evidence before me of any misrepresentations made by Mr. Garcia about the apartment’s condition before Mr. Costey moved in. So, I find it unproven that Mr. Garcia made any misrepresentations about the apartment’s condition.
27. Even if Mr. Garcia made the alleged misrepresentations, Mr. Costey has not proven that he relied on those alleged misrepresentations in deciding to rent the apartment and entering into the roommate agreement with Mr. Garcia, or that he incurred any damages as a result. So, I would dismiss Mr. Costey’s misrepresentation claims in any event as I find no proven reliance or damages.



### ***Alleged Interference with Quiet Enjoyment***

28. Next, Mr. Costey alleges that Mr. Garcia interfered with his quiet enjoyment from April to August 2022 when he resided at the apartment. Mr. Costey says that because of Milo, he was unable to properly use the apartment's common areas. He says that Mr. Garcia took no responsibility for the "state of things at the apartment". He further says that Milo was not properly taken care of, and that he tried his best to take care of him, which was also an extreme interference with his quiet enjoyment. Notably, Mr. Costey does not allege that Mr. Garcia directly interfered with his quiet enjoyment. His allegations appear to be solely based on Mr. Garcia's alleged failure to address Mr. Costey's concerns about Milo with JWS.
29. RTA section 28 protects a tenant's right to quiet enjoyment. I find RTA section 28 does not apply here since the RTA does not apply to roommate agreements and section 28 was not specifically incorporated into the parties' contract. However, in other CRT decisions, tribunal members have found that even where the RTA does not apply, rental agreements include an implied quiet enjoyment term (see, for example, *Fortin v. Malcolm*, 2023 BCCRT 259 and *Solimani v. Wong-Moon*, 2021 BCCRT 1014). Though previous CRT decisions do not bind me, I agree that such terms may be implied in roommate agreements, and I find they were implied in Mr. Costey and Mr. Garcia's agreement here.
30. In *Heckert v. 5470 Investments Ltd.*, 2008 BCSC 1298 at paragraph 99, the British Columbia Supreme Court, considering RTA section 28, said that at common law, the right to quiet enjoyment is defined as "the right to use the premises for all of the usual purposes incidental to occupation." The court went on to say that to prove a breach of quiet enjoyment, there must be proof of an interference with the use and enjoyment of the rented or leased premises and that interference must be a serious and substantial interference—mere temporary inconvenience is not enough (see paragraphs 99 and 100).
31. Based on text messages in evidence which include photographs, I find Mr. Costey found dog feces, which I infer was Milo's, on the apartment floor on 2 occasions.

Videos in evidence also show bathroom garbage strewn across the common living areas, presumably by Milo, as well as an instance where Milo appears to have ripped apart what I infer was a pillow or cushion, leaving white fluffy stuffing all over the common living areas.

32. While I accept the above instances were undoubtedly an inconvenience for Mr. Costey, I am not satisfied on the evidence before me that the messes Milo caused interfered with Mr. Costey's ability to use the common living areas in any serious or substantial way. Further, while text messages in evidence show an obvious attempt by Mr. Garcia to keep Equitable from finding out about Milo, I find the evidence does not establish any interference by Mr. Garcia with Mr. Costey's quiet enjoyment especially since Milo was JWS's dog, not Mr. Garcia's. On balance, I find it unproven that Mr. Garcia interfered with Mr. Costey's quiet enjoyment. So, I dismiss Mr. Costey's claims against Mr. Garcia.

### ***Counterclaim***

33. I turn now to Mr. Garcia's counterclaim for unpaid rent and internet costs. As noted above, Mr. Costey undisputedly did not pay his \$734.33 rent for August 2022 despite living at the apartment for the entire month of August, nor has he paid Mr. Garcia anything for internet. Mr. Costey does not deny that he agreed to pay for internet under the parties' contract. However, he says that after he moved in, Mr. Garcia advised him that his internet provider had increased its rates. At Mr. Costey's request, Mr. Garcia agreed to call his internet provider to try to reduce the internet charges back down to the original amount and said he would get back to Mr. Costey. Mr. Costey says that he told Mr. Garcia that he was happy to pay the original amount but that he was a light internet user and could hotspot from his cellphone instead. So, Mr. Costey says that Mr. Garcia agreed not to charge Mr. Costey for internet.
34. In his submissions, Mr. Garcia says that he does not think it was okay for Mr. Costey to say he would not pay for internet when their signed contract said otherwise. However, he admits that he did not attempt to call his internet provider to reduce the charges back down and also does not deny that he agreed not to charge Mr. Costey

for internet after Mr. Costey said he would hotspot off of his phone instead. So, I find the parties agreed to amend their contract to exclude any charges for internet. Accordingly, I find Mr. Costey does not owe Mr. Garcia anything for internet charges.

35. As noted above, Mr. Costey also says that Mr. Garcia told him not to pay August's rent. Mr. Garcia says that he only said this out of frustration after Mr. Costey said he would only pay half rent for August. In an August 1 email, Mr. Costey said that he would send half the rent "today" and that Mr. Garcia could use his damage deposit to cover the other half. The parties exchanged further emails and on August 2, Mr. Garcia told Mr. Costey not to send him anything for August and that Mr. Costey would get his deposit back at the end of the month. Mr. Garcia undisputedly did not return Mr. Costey's \$367 deposit to him, on account of Mr. Costey not paying August's rent.
36. While Mr. Garcia told Mr. Costey not to send him any rent for August in his August 2 email, I do not find that Mr. Garcia waived his right to claim unpaid rent for August from Mr. Costey as I find this was an off-hand remark that was not intended to be binding. Under the parties' contract, Mr. Costey remains responsible for August's rent. So, I find Mr. Costey owes Mr. Garcia \$734.33 for August's rent. Since Mr. Garcia has not returned Mr. Costey's \$367 deposit to him, and there is no evidence before me that Mr. Garcia was otherwise entitled to keep the deposit due to any damage caused by Mr. Costey to the apartment, I find it appropriate to deduct the \$367 deposit from the \$734.33 for August's rent. So, I find Mr. Costey owes Mr. Garcia \$367.33.
37. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Garcia is entitled to pre-judgment interest on the \$367.33 for unpaid rent from August 1, 2022, the date the rent was due, to the date of this decision. This equals \$11.02.
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. As Mr. Garcia was partially successful with his counterclaim, I find he is entitled to reimbursement of \$37.50 for half his paid CRT fees. Since Mr. Costey was unsuccessful, I dismiss his claim for reimbursement of his paid CRT fees.

## ORDERS

39. Within 14 days of the date of this decision, I order Mr. Costey to pay Mr. Garcia a total of \$415.85, broken down as follows:
- a. \$367.33 in debt for unpaid rent,
  - b. \$11.02 in pre-judgment interest under the COIA, and
  - c. \$37.50 in CRT fees.
40. Mr. Garcia is entitled to post-judgment interest, as applicable.
41. I dismiss Mr. Costey's claims in dispute 5045.
42. 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