



# Civil Resolution Tribunal

Date Issued: July 11, 2023

File: SC-2022-007309

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cheema v. Devlin*, 2023 BCCRT 582

BETWEEN:

JASMINE KAUR CHEEMA

**APPLICANT**

AND:

AMBER DEVLIN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This is a roommate dispute. The applicant, Jasmine Kaur Cheema, rented a room from the respondent, Amber Devlin. Miss Cheema says Ms. Devlin initially gave her 30 days' notice to end their rental agreement, but then a short time later evicted her without proper notice and changed the locks so she could not access her room. Ms.

Cheema claims reimbursement of \$1,650 for one month's rent and her damage deposit.

2. Ms. Devlin says she was entitled to terminate the parties' agreement without notice because she felt threatened, and owes nothing.
3. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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.
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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. 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.

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. Generally, 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 this is a contractual dispute falling within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.

## **ISSUE**

9. Did Ms. Devlin breach the rental agreement when she evicted Miss Cheema, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, Miss Cheema, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
11. The parties agree to the following facts. They entered into a rental agreement for Miss Cheema to rent a room in Ms. Devlin's apartment beginning on October 1, 2022. Miss Cheema paid \$1,100 for October rent and a \$550 damage deposit. On September 29, 2022, Miss Cheema moved her belongings into the room. On September 30, 2022, Ms. Devlin sent Miss Cheema a 30 day notice to end the rental agreement.

However, on October 5, 2022, Ms. Devlin changed the locks to the apartment, which meant Miss Cheema no longer had access.

12. The parties' written rental agreement was for a month to month rental beginning on October 1, 2022. The agreement required Miss Cheema to give Ms. Devlin "one full rental month's notice to move out", and Ms. Devlin to give Miss Cheema "30 days' notice to move out" if Ms. Devlin was served with an eviction notice. The agreement also included a condition that Miss Cheema agree to "no violence, threats, intimidation against Amber Devlin" or she would be asked to move out "without 30 days' notice".
13. Ms. Devlin says she needed the room because her daughter asked to move back in, and initially provided notice to end Miss Cheema's tenancy on that basis. She says she told Miss Cheema about her daughter needing to move back in, and provided 30 days' notice to end the tenancy on September 30, 2022. The parties do not dispute that 30 days' notice was the agreed-to notice period for Ms. Devlin to end the tenancy under the agreement.
14. Ms. Devlin says after providing notice, Miss Cheema became angry with her, argued she had not taken occupancy and asked for her October rent money back. Ms. Devlin also says Miss Cheema falsely accused her of moving Miss Cheema's belongings, returned her key and moved her belongings out.
15. Ms. Devlin says she began to feel threatened, and was concerned about becoming a victim of rental fraud. On that basis, Ms. Devlin says she became entitled to end the rental agreement without 30 days' notice and change the locks. I do not accept this submission. I find Ms. Devlin was still required to provide Miss Cheema 30 days' notice to end the tenancy, and failed to do so.
16. As noted, Ms. Devlin initially gave Miss Cheema notice on September 30, 2022, before Miss Cheema had stayed in the room, and before the start of the rental period under the parties' agreement. Although Miss Cheema undisputedly moved some belongings into the room early on September 29, 2022 with Ms. Devlin's consent, she

herself had not yet stayed in the room. The parties' text messages show Miss Cheema suggested she had not taken occupancy on September 30, 2022, before the start of the rental period. I note the text messages also show Miss Cheema said she would move the rest of belongings out and suggested this would allow Ms. Devlin's daughter to move in as soon as possible, and asked for a refund of her paid rent and damage deposit on this basis. Further, when Ms. Devlin then suggested that Miss Cheema stay through October, Miss Cheema agreed to do so. Given all the above, I find the evidence does not show that Miss Cheema threatened Ms. Devlin by suggesting she had not taken occupancy or asking for a refund of her rent and damage deposit after she received the initial 30 days' notice to end the tenancy.

17. The parties' text messages and emails show that Miss Cheema suggested some of her belongings had been moved and asked Ms. Devlin not to touch anything. However, I find this does not amount to a threat or intimidation, such that Ms. Devlin would be entitled to terminate the parties' agreement without notice.
18. I find the parties' text messages and emails do not show that Miss Cheema made any threats towards Ms. Devlin or intimidated her. Ms. Devlin did not provide details of any other alleged threats. I find the evidence as a whole does not show that Miss Cheema intimidated or threatened Ms. Devlin. Therefore, I find Ms. Devlin was not entitled to terminate the parties' agreement without 30 days' notice or change the locks to prevent Miss Cheema from accessing her room on that basis.
19. The parties' text messages show that on October 4, 2022, Ms. Devlin told Miss Cheema she could not have access to the apartment. So, I find Ms. Devlin terminated the parties' agreement without notice on October 4, 2022. As noted, Ms. Devlin changed the locks on October 5, 2022. I find she breached the parties' agreement by evicting Miss Cheema without notice and changing the locks.
20. I note Miss Cheema moved some of her belongings out in early October, after receiving the initial 30 days' notice from Ms. Devlin. Ms. Devlin says this shows that Miss Cheema abandoned the room and was not honouring the month to month rental agreement. However, Miss Cheema had no obligation under the parties' agreement

to keep her belongings in the room or stay there during the 30 day notice period. So, I find Miss Cheema did not breach the parties' rental agreement by moving some of her belongings out or by staying elsewhere during the rental term.

21. I turn to the question of damages. Damages for breach of contract are generally meant to put the innocent party in the same position as if the contract had been performed as agreed. See *Water's Edge Resort v. Canada (Attorney General)*, 2015 BCCA 319.
22. Miss Cheema claims reimbursement of her \$550 damage deposit and \$1,110 for October rent. Under the parties' agreement, Miss Cheema agreed that her \$550 damage deposit would be used to cover the cost to repair and replace any broken items. Ms. Devlin does not allege that Miss Cheema damaged or broke anything, and the evidence does not show that she did. So, I find Ms. Devlin must reimburse Miss Cheema \$550 for her damage deposit.
23. Miss Cheema paid \$1,110 for her October rent, and was entitled to use and access her room until October 31, 2022. However, as noted, Ms. Devlin undisputedly changed the locks, and prevented Miss Cheema from accessing her room after October 5, 2022. I find Miss Cheema was prevented from using or accessing her room for almost the entire month of October, which she would have been entitled to do if the contract had been performed as agreed. In the circumstances, I find Miss Cheema is reasonably entitled to a refund of her rent from October 5 to October 31, 2022 (27 days). This equals \$958.06.
24. In summary, I find Miss Cheema is entitled to a refund of her \$550 damage deposit and \$958.06 for part of her October rent, which totals \$1,508.06.

### ***Interest, CRT fees and expenses***

25. The *Court Order Interest Act* applies to the CRT. Miss Cheema is entitled to pre-judgment interest on the \$1,508.06 from October 5, 2022, the date Ms. Devlin terminated the agreement, to the date of this decision. This equals \$41.71.

26. 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. Miss Cheema was successful in this dispute, so I find she is entitled to reimbursement of \$125 in paid CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

27. Within 30 days of the date of this order, I order Ms. Devlin to pay Miss Cheema a total of \$1,674.77, broken down as follows:

- a. \$1,508.06 as reimbursement for rent and her damage deposit,
- b. \$41.71 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

28. Miss Cheema is entitled to post-judgment interest, as applicable.

29. 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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Leah Volkers, Tribunal Member