



Civil Resolution Tribunal

Date Issued: July 21, 2023

File: SC-2022-007467

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Guan v. Mok*, 2023 BCCRT 612

B E T W E E N :

ZHI XIONG GUAN

APPLICANT

A N D :

KA YAN MOK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about shared accommodations. The respondent, Ka Yan Mok, rented a room from the applicant, Zhi Xiong Guan. Mr. Guan says Ms. Mok moved out on September 12, 2022 without giving proper notice and also did not pay any rent for the month of September. Mr. Guan claims \$760, made up of \$480 for unpaid rent from

September 1 to September 12, 2022 and \$280 for failure to give the allegedly agreed upon 1-week notice before moving out.

2. Ms. Mok admits that she has not paid Mr. Guan anything for September's rent. However, she says Mr. Guan misrepresented the rental by failing to tell her that another tenant would be occupying the bedroom next to hers. She also says that Mr. Guan verbally threatened her, making her feel unsafe. I infer Ms. Mok asks that Mr. Guan's claims be dismissed.
3. Mr. Guan is represented by a family member who is not a lawyer. Ms. Mok is 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. Some of the evidence in this dispute amounts to a "he 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.

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, the CRT does not have jurisdiction over residential tenancy disputes, which are decided by the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, section 4 of the RTA says the RTA does not apply to disputes where a tenant shares a kitchen or bathroom with the property's owner. It is undisputed that Mr. Guan owns the house and that the parties shared a kitchen and possibly also some bathroom facilities. So, I find the RTA does not apply and this dispute falls within the CRT's small claims jurisdiction set out in section 118 of the CRTA.
9. Both parties provided extracts of their WhatsApp texting conversations which are largely not in English. CRT rule 1.7(5) says all information and evidence must be in English or translated to English. So, in making my decision below I have not relied on any evidence that was not in English and did not have an accompanying English translation.

ISSUE

10. The issue in this dispute is whether Ms. Mok must pay Mr. Guan \$480 for unpaid rent and \$280 for failure to give notice before moving out.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Guan as the applicant must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
12. The following background facts are undisputed. In July 2022, Ms. Mok was living outside of Canada but intended to move to British Columbia in August. So, she contacted Mr. Guan about the rental after seeing his online advertisement. There is no copy of the advertisement in evidence and the parties disagree about what exactly the advertisement said. However, it is undisputed that Ms. Mok agreed to rent a bedroom on the ground floor of Mr. Guan’s home starting in August 2022. Mr. Guan and his family live on the home’s top floor. The parties did not have a written agreement, but they agreed on \$1,200 a month for rent. However, since Ms. Mok was not arriving in Canada until late August, Mr. Guan agreed to charge her only \$1,000 for August’s rent. Ms. Mok undisputedly paid August’s rent, albeit late. On August 31, Mr. Guan gave Ms. Mok verbal notice to move-out by September 30, 2022. On September 12, Ms. Mok vacated the rental without notice, and without having paid Mr. Guan anything for September’s rent.
13. As noted above, Ms. Mok alleges Mr. Guan misrepresented the rental accommodations. In particular, Ms. Mok says that Mr. Guan advertised the rental as a one bedroom suite with a private washroom. While Ms. Mok uses the term “suite”, Ms. Mok does not argue that the one bedroom suite was advertised as having its own kitchen. Ms. Mok admits that she knew the house would be shared with Mr. Guan’s family who live on the top floor. Further, she does not dispute that she knew she would be sharing a kitchen, living room and laundry facilities with Mr. Guan and his family. However, Ms. Mok says that after she arrived in Canada and went to move in on August 20, Mr. Guan told her that a second bedroom on the ground floor was occupied by another tenant who had moved in earlier that month. Ms. Mok says that had Mr. Guan told her that another tenant would be occupying the second bedroom, she would have found a different place to live.

14. Mr. Guan denies that he misrepresented the rental to Ms. Mok. He says the rental unit was a shared accommodation with the kitchen, living room, laundry and some bathroom facilities shared with himself and the house's other occupants. He says his online advertisement clearly set this out and that he reiterated this to all potential renters to ensure there were no misunderstandings.
15. As noted above, the limited evidence before me includes the parties' WhatsApp messages. The majority of the parties' WhatsApp messages are not in English. However, both parties provided English translations of these messages. While there are some minor differences between the 2 sets of translations, overall, I find the translations are consistent and so I find both sets of translations are accurate.
16. The WhatsApp messages show that Mr. Guan and Ms. Mok had a video call on July 12, 2022 so that Ms. Mok could view the rental unit. Mr. Guan says the parties discussed the rental terms during this video call. After the video call, Ms. Mok also undisputedly had her friend, J, go in person to view the rental unit the following day. In the WhatsApp messages, Mr. Guan says that J took pictures of the rental which J was going to send to Ms. Mok. Following this, Ms. Mok agreed to rent the accommodations from Mr. Guan and provided a \$200 deposit on July 15, 2022.
17. Ms. Mok says that when J visited and viewed the rental unit, "it was a one bedroom with a private washroom on the ground floor" and that Mr. Guan did not mention that it was a shared accommodation. Ms. Mok did not provide any witness statement in evidence from J setting out what the rental unit looked like or J's conversations with Mr. Guan. I find it likely that between Ms. Mok's video call with Mr. Guan on July 12 and J viewing the rental on July 13, either Ms. Mok or J would have asked Mr. Guan about the second bedroom. If Mr. Guan had told J that only Ms. Mok would be occupying the ground floor, I would have expected Ms. Mok to provide a witness statement from J setting this out. I also would have expected Ms. Mok to address the alleged misrepresentation with Mr. Guan after she arrived at the rental and realized the second room was occupied by a tenant. However, there is nothing in the WhatsApp messages that suggests that Ms. Mok ever raised this issue with Mr.

Guan. Further, as noted above, while Ms. Mok says the online advertisement she viewed before contacting Mr. Guan did not mention the rental was a shared accommodation, she did not provide a copy of the advertisement in evidence to support her allegations. Given all of the above, I find it appropriate to draw an adverse inference against Ms. Mok. I find that she knew the rental was a shared accommodation by virtue of the fact that she knew she had to share a kitchen and other facilities in the house with Mr. Guan and his family. I also find it likely that she knew that someone else may at some point live in the second bedroom. So, I find it unproven that Mr. Guan misrepresented the rental.

18. As noted, Ms. Mok also alleges that Mr. Guan verbally threatened her. She says that on August 31, she had a colleague, C, meet with Mr. Guan to discuss signing a rental contract. Either during or right after this meeting, Ms. Mok says that Mr. Guan got angry and threatened her verbally, though she does not say what the exact threats were. She says it was after this incident that Mr. Guan gave her verbal notice to move out by the end of September. Ms. Mok also says that Mr. Guan threatened her again on September 12 after she told him she had found a new place to live and would be moving out on September 15. She says that Mr. Guan or his son blocked the door so that she and J, who was helping her move some belongings on September 12, could not leave the house. Ms. Mok says that Mr. Guan also threatened to disclose her personal information on the internet and “influence” her employment. Ms. Mok says that Mr. Guan told her that some of his tenants were gangsters. She says she was terrified, and so she went to her room and called the police. After the police arrived, Ms. Mok says the police informed her to leave if she felt unsafe. She says after the police left, Mr. Guan signed a piece of paper that said he agreed to end the tenancy on September 12 and that she could move out that night, which she did. Ms. Mok says she also asked Mr. Guan if he wanted rent from September 1 to 12 but he said that he wanted to discuss the matter with his son first and refused the rent.
19. Mr. Guan denies Ms. Mok’s allegations. He says he gave her notice to end the tenancy by September 30, 2022 due to Ms. Mok’s failure to pay August’s rent on time and due to “integrity issues”. Further, Mr. Guan says, and the WhatsApp messages

show, that on September 12, he asked Ms. Mok when he would be receiving September's rent. No response from Ms. Mok is in evidence and Ms. Mok does not say that she responded to this message, so I find that she did not. Mr. Guan says the same evening, he noticed Ms. Mok was moving luggage, which prompted him to ask if she was vacating the rental unit early. He says Ms. Mok then called the police, claiming she felt unsafe.

20. I find the parties' rental agreement included an implied term that the parties would treat each other respectfully and not engage in behaviour that made the other feel unsafe (see for example non-binding but persuasive decisions in *Wells v. Stetsko*, 2021 BCCRT 545, and *Ahn v. Hsu*, 2021 BCCRT 974). I find Ms. Mok essentially alleges that Mr. Guan breached the parties' agreement by threatening her, allowing her to end the rental agreement without notice on September 12. However, for the reasons that follow, I find that Ms. Mok has failed to prove any such breach by Mr. Guan.
21. Based on Ms. Mok's version of events, J and possibly also C would have witnessed Mr. Guan's allegedly threatening behaviour, some of which I note allegedly did not occur until after Ms. Mok told Mr. Guan that she was ending the tenancy early. If J and C witnessed Mr. Guan making any threats, I would expect Ms. Mok to provide witness statements from them to support her allegations. However, she has not done so here. As a result, and given the lack of any other evidence that shows any threats made by Mr. Guan, I draw an adverse inference against Ms. Mok. So, I find it unproven that Mr. Guan made any threats or otherwise engaged in any behaviour to make Ms. Mok feel unsafe during her tenancy. Accordingly, I find it unproven that Mr. Guan breached the parties' agreement. Further, while Ms. Mok says Mr. Guan allegedly signed a document agreeing to end the tenancy on September 12 instead of September 30, she did not provide a copy of this document in evidence. So, I find it unproven that the parties mutually agreed to end the tenancy on September 12.
22. I find it was an implied term of the rental agreement that either party would give the other reasonable notice to end it. Mr. Guan says the parties agreed to a 1-week notice

period to end the tenancy. However, there is no evidence of any such agreement before me. So, I find the parties did not have an explicit agreement about the reasonable notice each must provide before ending the tenancy. However, the CRT has implied reasonable notice terms in similar agreements in decisions such as *Anderson v. Kuzmick*, 2023 BCCRT 106, which are not binding on me but with which I agree. In *Anderson*, the CRT implied a 1-month notice period. Here, since Mr. Guan says that only a 1-week notice period was required, I find it appropriate to imply a 1-week notice term.

23. I find Ms. Mok breached the parties' agreement when she moved out on September 12 without giving any notice. I find Mr. Guan is entitled to damages equivalent to 1 week's rent for this breach. Based on the agreed \$1,200 a month for rent, I find Ms. Mok must pay Mr. Guan the claimed \$280 in damages for her failure to give notice before moving out. As Ms. Mok also undisputedly did not pay any rent while living in Mr. Guan's home from September 1 to 12, I find Mr. Guan is entitled to pro-rated rent for these 12 days. This equals the claimed \$480.
24. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Guan is entitled to pre-judgment interest on the \$760 (\$280 in damages and \$480 for unpaid rent) from September 12, 2022, the date Ms. Mok moved out, to the date of this decision. This equals \$23.25.
25. 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. Here, neither party paid any CRT fees nor do the parties claim any dispute-related expenses. So, I order no reimbursement.

ORDERS

26. Within 14 days of the date of this decision, I order Ms. Mok to pay Mr. Guan a total of \$783.25, broken down as follows:
 - a. \$280 in damages for failure to give notice before moving out,

b. \$480 in debt for unpaid rent, and

c. \$23.25 in pre-judgment interest under the COIA.

27. Mr. Guan is entitled to post-judgment interest, as applicable.

28. 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.

Nav Shukla, Tribunal Member