



# Civil Resolution Tribunal

Date Issued: August 31, 2023

File: SC-2022-008748

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wong v. Robarts*, 2023 BCCRT 746

BETWEEN:

WONG PO YAN JOAN and CHAN SHUN WAH

**APPLICANTS**

AND:

NATALIE ROBARTS

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This dispute is about a security deposit paid under a homestay agreement. The applicant, Chan Shun Wah, rented a room from the respondent, Natalie Robarts, starting in September 2021. The co-applicant, Wong Po Yan Joan, is Mr. Chan's<sup>1</sup>

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<sup>1</sup> The evidence suggests the applicant, Chan Shun Wah's, last name is "Chan", and the co-applicant, Wong Po Yan Joan's, last name is "Wong". Accordingly, I have addressed them as Mr. Chan and Ms.

mother and was a party to the homestay agreement. The applicants undisputedly paid Ms. Robarts a \$1,100 security deposit and say she has improperly provided no refund. They admit Ms. Robarts is entitled to keep \$350 of the security deposit to compensate her for the time she spent cleaning the room, doing Mr. Chan's laundry and packing up Mr. Chan's belongings. The applicants claim an order that Ms. Robarts refund the remaining \$750. As discussed below, in their later submissions, the applicants say they are entitled to a \$927.85 refund.

2. Ms. Robarts admits that she originally agreed to refund \$542 to the applicants. However, she says that considering the hours she spent packing up Mr. Chan's belongings and cleaning out the room, in addition to alleged threats made by Ms. Wong, she felt it was fair not to provide any refund.
3. Ms. Wong represents both applicants. Ms. Robarts 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.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and an oral hearing is not necessary.
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.

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Wong, respectively, throughout this decision. I also refer to Ms. Wong by her last name in the index above.

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.

### ***Preliminary Issues***

8. Generally, the CRT does not take jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the Residential Tenancy Board (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 owner. The parties do not dispute that Mr. Chan shared a kitchen, bathroom, or both with Ms. Robarts, the house's owner. So, I find that this contractual dispute is within the CRT's small claims jurisdiction under CRTA section 118.
9. Next, as noted above, in their submissions, the applicants seek a higher refund than the \$750 claimed in the Amended Dispute Notice. I find the applicants' refund claim is limited to \$750, given that is the amount claimed in the Amended Dispute Notice. Nothing turns on this given my findings below.

## **ISSUES**

10. The issues in this dispute are:
  - a. Are the applicants entitled to a refund for their paid security deposit?
  - b. If so, how much?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicants must prove their 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. Ms. Robarts did not provide any written argument or documentary evidence, despite having the opportunity to do so.

12. The parties' written homestay agreement is in evidence. The agreement names Ms. Wong, "Michael Chan", and another person as the "renters" and Ms. Robarts as the "host". Though the parties did not address who "Michael Chan" is, based on the evidence before me I find that Mr. Chan also goes by the name "Michael Chan". The agreement says the rental would begin on September 13, 2021 and rent was \$1,100 a month, due on the 1<sup>st</sup> of every month. The applicants undisputedly paid the monthly rent up until the end of September 2022 as well as a \$1,100 security deposit. The agreement noted that the security deposit would be used to cover the last month's homestay fee, which I find means the security deposit would be applied to the last month's rent.
13. On September 6, 2022, Ms. Robarts messaged Ms. Wong on WhatsApp and gave notice for Mr. Chan to move out by October 31, 2022. At the time, Mr. Chan was undisputedly out of the country and had been since June 25, 2022.
14. In the messages, Ms. Robarts said the reason for ending the tenancy was due to Mr. Chan's failure to keep his room clean, including leaving wet towels and dirty laundry in the closet, which resulted in the clothes and floor getting mouldy. Ms. Wong asked if she could see pictures of the mould and Ms. Robarts responded that it had been cleaned up already and she had already washed the clothes. Ms. Wong then informed Ms. Robarts that Mr. Chan admitted he left clothes inside the closet and apologized for the mess he left behind. After some further messages back and forth, Ms. Wong said Mr. Chan would move out "as scheduled". Then, 2 days later, Ms. Wong wrote that Mr. Chan had found a new place to live and could move out early. On September 15, Ms. Robarts wrote that she had discovered that Mr. Chan had left dirty dishes in his room, wet towels on the back of his bedroom door, and that he had not cleaned his room in several months.
15. Ms. Wong responded the following day, saying she would have a friend pack up Mr. Chan's things and move out by the end of September. She said that since Ms. Robarts gave notice on September 6 that she wanted Mr. Chan to move out, she would pay Ms. Robarts' rent until October 5 which equaled \$178. Ms. Robarts then

responded that the entire \$1,100 security deposit would go towards October's rent and that Mr. Chan could not vacate early without giving 30 days' notice. On September 20, Ms. Wong told Ms. Robarts that Mr. Chan would return on September 30 to pack up his belongings and clean his room. Ms. Robarts responded on September 22 that she was not comfortable with Mr. Chan coming to pack up his belongings and said that she would pack everything up and have it ready for him to pick up on September 30.

16. In the same message, Ms. Robarts said she would be deducting the following from the security deposit:
  - a. \$180 for 6 hours of cleaning,
  - b. \$60 for 2 hours spent doing Mr. Chan's laundry,
  - c. \$90 for 3 hours spent packing up Mr. Chan's belongings, and
  - d. \$178 for pro-rated rent from October 1 to 5, 2022.
17. In the message, Ms. Robarts said the \$30 an hour rate is what she charges on Task Rabbit for cleaning, which she said was "much lower than hiring a service". Ms. Robarts said that she would refund the remaining \$542 to Ms. Wong by October 31, 2022. In response, Ms. Wong did not dispute the \$542 refund amount and provided Ms. Robarts with her email address for the e-transfer refund as well as various times on September 30 that Mr. Chan could attend to pick up his belongings. The WhatsApp messages in evidence show that Ms. Robarts and Ms. Wong discussed on October 1, 2022 that Mr. Chan would retrieve his belongings from Ms. Robarts' home that day. So, I find Mr. Chan likely retrieved his belongings that day and moved out from Ms. Robarts' home on October 1.
18. Ms. Robarts undisputedly has not returned any portion of the \$1,100 security deposit to the applicants, despite Ms. Wong's repeated requests on WhatsApp.
19. As mentioned above, the applicants do not dispute that Ms. Robarts was entitled to make some deductions from the security deposit for the time she spent cleaning,

doing laundry and packing. They do not take issue with the hours Ms. Robarts says she spent doing these tasks but say that \$30 an hour is too high. Instead, the applicants say \$15.65 an hour, the minimum wage in British Columbia at the relevant time, is more appropriate. As noted above, the applicants have the burden of proving their claims. So, I find the applicants must prove that the \$30 an hour Ms. Robarts proposed to charge in the September 22 message is not reasonable. Notably, Ms. Wong did not object to the \$30 an hour rate when Ms. Robarts provided her calculations on September 22. On the evidence before me, I find nothing unreasonable about the \$30 an hour rate for Ms. Robarts to complete the cleaning, laundry and packing work. I also find the evidence does not support a finding that the \$15.65 minimum wage rate is more appropriate than the \$30 an hour rate Ms. Robarts intended to charge. So, I find Ms. Robarts was entitled to charge \$30 an hour for this work.

20. As noted above, in the Dispute Response, Ms. Robarts said that she felt she was entitled to keep the entire security deposit based on the amount of work involved and alleged threats made by Ms. Wong. As mentioned, Ms. Robarts provided no documentary evidence or written argument in this dispute. I find it unproven on the evidence before me that Ms. Wong made any threats to justify Ms. Robarts keeping the entire security deposit. I also find it unproven that Ms. Robarts spent any additional time than the above-noted 11 hours to do cleaning, laundry or packing work. So, I find Ms. Robarts is entitled to keep only \$330 (based on the 11 hours of work that the applicants do not dispute, at \$30 an hour) from the security deposit for this work.
21. This leaves the \$178 pro-rated rent for October 1 to 5. The parties' agreement said that if Ms. Robarts decided to terminate the agreement, she was required to give written notice and Mr. Chan would be required to check out within 30 days of the termination notice date. The agreement further said that Ms. Robarts would be required to provide a refund for every night after the check-out date that Mr. Chan did not spend in the rented accommodation. I find this means that once Ms. Robarts gave

Mr. Chan notice to move out, he could move out at any time within 30 days of that notice and Ms. Robarts was not entitled to any rent after Mr. Chan moved out.

22. As noted above, Ms. Robarts gave notice to Ms. Wong on September 6 that she wanted Mr. Chan to vacate by October 31, 2022. I have found above the WhatsApp messages show Mr. Chan retrieved his belongings and vacated Ms. Robarts' home on October 1, 2022. Based on the agreement's terms, I find Ms. Robarts is entitled to deduct rent only for the unpaid day of October 1 from the security deposit. This equals \$35.48.
23. In total, I find Ms. Robarts is entitled to keep \$365.48 from the \$1,100 security deposit and must return the remaining \$734.52 to the applicants.
24. The Court *Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgment interest on the \$734.52 from October 31, 2022, the date the parties' agreed the security deposit refund would be made, to the date of this decision. This equals \$24.51.
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. I see no reason in this case not to follow that general rule. I find the applicants are entitled to reimbursement of \$125 for their paid CRT fees. None of the parties claim any dispute-related expenses, so I award none.

## **ORDERS**

26. Within 14 days of the date of this decision, I order Ms. Robarts to pay the applicants a total of \$884.03, broken down as follows:
  - a. \$734.52 in debt as a security deposit refund,
  - b. \$24.51 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.

27. The applicants are 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.

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Nav Shukla, Tribunal Member