



Civil Resolution Tribunal

Date Issued: September 7, 2023

File: SC-2022-007305

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wang v. Hu*, 2023 BCCRT 762

BETWEEN:

YUNONG WANG

APPLICANT

AND:

SHUPING HU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a roommate dispute.
2. The applicant, Yunong Wang, rented a room in a townhouse owned by the respondent, Shuping Hu. The applicant says the respondent breached the parties' rental agreement by evicting her before the end of the 6-month fixed term and failing

to return her damage deposit. The applicant seeks the return of her \$450 damage deposit. She also seeks \$3,200, which is a \$400 difference between the rent she paid and the rent the respondent undisputedly began charging other people after she was evicted, over 8 months. The applicant says she is entitled to this amount due to rising rent costs. In total, the applicant seeks \$3,650 in damages.

3. The respondent says the applicant is the one who breached the agreement by having her mother stay in her room with her longer than the 2 months the respondent verbally agreed to. The respondent also says she was entitled to end the agreement because her own mother was coming to stay with her. Finally, the respondent says she kept the deposit to pay for damage she says the applicant caused, and for the cost of replacing the door lock due to safety concerns she had about the applicant. So, the respondent says she owes the applicant nothing.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.
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. Some of the evidence in this dispute amounts to a "she 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.

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.
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.

Preliminary issues

9. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, RTA section 4(c) says it does not apply to accommodations in which a tenant shares bathroom or kitchen facilities with the owner. It is undisputed the respondent owned the townhouse and the parties shared bathroom and kitchen facilities. So, I find this is a contractual dispute that falls within the CRT's small claims jurisdiction over debt and damages.
10. Next, the applicant submitted an audio recording of an argument that is not in English. The CRT rules require information and evidence relied on to be in English or translated to English. As the audio recording was not translated to English, I have not considered it in my decision.

ISSUES

11. The issues in this dispute are:
 - a. Did either party breach the rental agreement?
 - b. Is the applicant entitled to the claimed \$3,200 in damages?
 - c. Must the respondent reimburse the applicant's \$450 damage deposit?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence but refer only to the evidence and argument I find necessary to explain my decision.

The rental agreement

13. The parties signed a standard form RTB Residential Tenancy Agreement on April 26, 2022. I note that while the RTA does not apply here, to the extent the parties incorporated RTA terms into their agreement by using the RTB form, those are contractual terms that bind the parties. The tenancy was for a 6-month fixed term beginning May 1, 2022 and ending November 1, 2022, and would continue on a month-to-month basis after that. The applicant’s rent was \$900 a month, with a \$450 damage deposit.

14. The applicant says before she signed the agreement, the respondent was aware the applicant intended that her mother stay with her “for a period of time” until her mother left the country. The applicant says around July 2022, the respondent asked the applicant’s mother when she would be leaving Canada, and the applicant’s mother told her it would be no later than February. The applicant says the respondent raised no objection at that time. However, in August the applicant and her mother contracted COVID-19, at which point the applicant says the respondent “relentlessly” pursued them to move out.

15. On September 4, the respondent gave the applicant a 2-month notice to end the tenancy on the basis that the respondent’s mother was coming to stay with her. Subsequently, on September 9, the respondent gave the applicant an eviction notice, requiring that she vacate the room by 11am on September 23, 2022. The notice did not provide a reason for the eviction. It is undisputed that the applicant and her mother moved out of the room on September 23.

16. The respondent agrees the applicant told her the applicant's mother would be staying with her before the parties signed the agreement, but she says it was only for 2 months. The respondent says she verbally agreed to this on an exceptional basis. She says when the applicant's mother did not leave after 2 months, the applicant breached the parties' verbal agreement. The respondent also says she gave the applicant the 2-month notice because she thought the parties were bound by the RTA. However, when the respondent later called the RTB, she says she was told their arrangement was not subject to the RTA. After that, she says she decided to evict the applicant with 2 weeks' notice due to "quarrels and altercations" that made her feel threatened and unsafe.

17. First, the verbal agreement. I find the parties did not have a valid verbal agreement to allow the applicant's mother to stay in the applicant's room with her. This is because the parties disagree on whether the applicant's mother was allowed to stay for 2 months or longer. I find the period to be an essential term of the alleged verbal agreement, about which the parties did not have a "meeting of the minds". I also find there was no consideration. "Consideration" is the exchange of something of value between the parties and is a critical element of a binding contract. Here, there is no evidence the applicant provided or promised to provide anything to the respondent in exchange for her mother being allowed to stay in her room with her.

18. Next, the parties' written rental agreement (the agreement). Paragraph 14(4) of the agreement allowed the respondent to end the tenancy for the reasons and in the manner set out in the RTA. As noted, the RTA does not generally apply here, but I have found the agreement incorporated certain RTA terms. While the notice to end the agreement did not include a reason, in this proceeding the respondent gives 3 reasons for doing so:
 - i. The respondent intended to have her own mother occupy the room.
 - ii. The applicant or her mother threatened the respondent's safety.
 - iii. The applicant behaved unreasonably by allowing her mother to stay in her room with her longer than 2 months.

19. I begin with the respondent landlord's use. The respondent provided a copy of a November 24, 2022 plane ticket to Vancouver she says was for her mother. However, she evicted the applicant on September 23, 2022. In addition, the applicant submitted copies of an ad for the room she says the respondent posted after evicting her which listed the room's availability as September 28, 2022. In these circumstances, I find it unlikely the respondent genuinely intended to have her mother occupy the room.
20. Next, I find there is no evidence the applicant or her mother threatened the respondent or were violent towards her, as alleged. The respondent references police involvement and says the other roommate witnessed altercations, but she did not provide a police report or a witness statement from the roommate.
21. Finally, the applicant's alleged unreasonable behaviour. Paragraph 11 of the agreement said the landlord must not stop a tenant from having guests under "reasonable circumstances". Under the RTA section 47(1)(c), a landlord may terminate a tenancy for cause where there are an unreasonable number of occupants in a rental unit. Here, I find it was unreasonable for the applicant to expect she could have her mother stay with her in her room for several months as her guest. I find this should have been apparent to the applicant, particularly when the respondent asked her mother when she would be leaving Canada in July 2022. So, I find the respondent was entitled to terminate the applicant's tenancy for cause. However, termination for cause, under the RTA as incorporated at paragraph 14(4) of the agreement, would have required the respondent to give the applicant more than 1 month's written notice based on the date rent was due, which she undisputedly did not do. So, I find the respondent breached the agreement by evicting the applicant on September 23, 2022 without the required written notice.

Damages

22. 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). Here, that means putting the

applicant in the position she would have been in had the respondent given her the required notice, instead of the 2 weeks that was given.

23. The applicant says rent has increased “drastically” since she signed the rental agreement with the respondent, but she provided no evidence of the rent she paid after her September 23 eviction. So, I find no basis to award the applicant damages for other accommodation expenses she may have incurred for the rest of September, or for accommodation expenses above the \$900 she would have had to pay for October if the respondent had given her the required notice.
24. Instead, the applicant claims \$3,200, which she says is the difference between her \$900 monthly rent and the \$1,300 monthly rent the respondent undisputedly began charging for the room after the applicant moved out. The applicant claims this \$400 monthly difference over 8 months which she describes as “the initial staying time”. I infer 8 months consists of the 6 months under the fixed-term contract, plus the 2-month minimum notice period the respondent would have had to give her at the end of the fixed term to end the agreement under the RTA. However, I have found the respondent had cause to terminate the agreement, so the 2-month minimum notice period did not apply.
25. I find the applicant’s claim for the increased rent the respondent charged after the applicant moved out can be characterized as a claim for disgorgement. Disgorgement is an equitable remedy that involves giving up profits made as a result of illegal or wrongful conduct. In *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, the court found that disgorgement may be available for a breach of contract in certain exceptional circumstances, which I find do not apply here. So, I find the applicant is not entitled to the difference between her rent and what the respondent later charged for the room over any period.
26. It is undisputed that the applicant paid her monthly rent for September but only stayed until September 23. So, I find the applicant is entitled to a refund of \$210 for the 7 days she did not rent the room in September ($\$900 / 30 \text{ days} \times 7 \text{ days} = \210). I note

the eviction notice in evidence also confirmed the respondent would refund the applicant the balance of any unused rent.

27. The applicant also says the respondent discriminated against her based on her COVID-19 status and took advantage of her lack of knowledge as a new immigrant to “deceive” her into signing an unfair rental agreement. I find a discrimination claim such as this would likely be more appropriate for the BC Human Rights Tribunal to consider under the *Human Rights Code*.

Damage deposit

28. The parties agree the respondent has not returned the applicant’s \$450 damage deposit. The respondent says this is because the applicant damaged a door frame and clogged the bathtub, both of which required repair. The respondent also says she had to change the lock on her door after the applicant left due to safety concerns. Finally, the respondent says she withheld an unspecified amount for utility bills. She says these costs came to more than \$450, so she was entitled to retain the applicant’s damage deposit.
29. Paragraph 6 of the agreement required that the respondent comply with the RTA to retain all or part of applicant’s damage deposit. Under the RTA, a landlord cannot claim against a damage deposit unless they conducted a condition inspection and completed a condition inspection report at the start and end of the tenancy. Even if the respondent completed inspections when the applicant moved in and moved out, there is no evidence the respondent completed inspection reports as required. So, I find the respondent was not entitled to retain the applicant’s damage deposit and I order her to reimburse the applicant \$450.
30. Even if the RTA had not applied to the damage deposit under the agreement, I would have found the respondent had not met the burden of proving the applicant caused the property damage, particularly since it is undisputed that the applicant shared the bathroom with another roommate. Also, while the respondent provided receipts for unclogging the bathtub and changing the lock, she did not provide a receipt for the

door repair, so I would have found it unproven that she was entitled to any amount for the door. Finally, I would have found it unproven that the respondent was entitled to retain the damage deposit to cover utility bill payments the applicant allegedly owed.

INTEREST, CRT FEES, AND DISPUTE-RELATED EXPENSES

31. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgment interest on the \$660 award from September 23, 2022, the date of the applicant's eviction, to the date of this decision. This equals \$23.81.
32. 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. The applicant was partially successful, but did not pay CRT fees. The applicant also requested \$15.62 for the cost of registered mail to serve the respondent, which I find reasonable so I allow it.

ORDERS

33. Within 30 days of the date of this order, I order the respondent, Shuping Hu, to pay the applicant, Yunong Wang, a total of \$699.43, broken down as follows:
 - a. \$660 in debt as reimbursement for unused rent and damage deposit,
 - b. \$23.81 in pre-judgment interest under the COIA, and
 - c. \$15.62 for dispute-related expenses.
34. The applicant is entitled to post-judgment interest, as applicable.
35. I dismiss the applicant's remaining claims.

36. 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.

Megan Stewart, Tribunal Member