Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Malhi v. Bala*, 2023 BCCRT 766

B E T W E E N :

RAJDEEP MALHI

APPLICANT

A N D :

RAJNI BALA

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. This is a roommate dispute. The applicant, Rajdeep Malhi, rented a room in a townhouse owned by the respondent, Rajni Bala. The applicant says the respondent prevented her from moving into the townhouse by refusing to allow some of the applicant's furniture, claiming it did not fit and allegedly damaged the respondent's

stairwell and walls. The applicant claims $1,500 for reimbursement of a $500 damage deposit and $1,000 for 1 month's paid rent, since she did not move in.

2. The respondent disagrees with the applicant's claims. She says the applicant's furniture did not fit up the townhouse's internal staircase, and damaged the walls when delivery people tried to maneuver it upstairs. The respondent says the applicant then decided not to move in after all without providing any notice. So, the respondent says she was entitled to keep the damage deposit and 1 month's rent.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.

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 "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 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.

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.

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.

Residential Tenancy Act

8. 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 expected to share a kitchen. So, I find this is a contractual dispute that falls within the CRT's small claims jurisdiction over debt and damages.

ISSUES

9. The issues in this dispute are:

    a. Did the respondent's refusal to allow some of the applicant's furniture breach the parties' rental agreement?

    b. If so, is the applicant entitled to the claimed $1,000 for 1 month's paid rent?

    c. Is the applicant entitled to reimbursement of her damage deposit?

EVIDENCE AND ANALYSIS

10. 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.

Rental agreement

11. The parties did not submit a written contract in evidence, so I infer they did not have one. However, it is undisputed that in October 2022, they agreed the applicant would rent a 1-bedroom with ensuite in the respondent's 3-bedroom townhouse for $1,000 a month beginning November 1, 2022. Copies of the applicant's banking records showed she paid the respondent $500 on October 19, 2022, which was undisputedly a damage deposit, and $1,000 on November 1, 2022 for November's rent. Based on the evidence before me, I find there are no other explicit contractual terms that the parties agreed to.

12. However, contracts may also have implied terms. Implied terms are terms the parties did not expressly consider, discuss, or write down but that are based on the parties' common presumed intention. Here, I find the rental agreement included 3 implied terms. First, I find it was implied that the respondent would permit the applicant to move in her desired furniture if it did not or would not likely cause property damage. Next, I find the applicant would take care to avoid damaging the respondent's property. Finally, I find that either party had to give the other reasonable notice to end the rental agreement. Previous CRT decisions have found similar agreements include an implied reasonable notice period of 1 month (see, for example, *Anderson v. Kuzmick,* 2023 BCCRT 106 and *Phillips v. Roberts*, 2021 BCCRT 109). CRT decisions are not binding on me, but I agree with the reasoning in these decisions. I find a 1-month notice term was implied in the parties' rental agreement.

Alleged breach

13. As noted above, the applicant undisputedly paid the respondent a $500 damage deposit on October 19, 2022. The parties further agree that on October 24, 2022, the applicant dropped her mattress off at the townhouse, and the respondent stored it in her garage until the applicant was able to move in early November.

14. The applicant says that on November 7, 2022, the date she intended to move in, the respondent refused to allow delivery people to take her wardrobe into the townhouse

at all. The applicant says the respondent was concerned the wardrobe might damage her stairs. The applicant submitted an email from the wardrobe company confirming it was unable to complete the delivery because the respondent denied it access to the townhouse, stopping the delivery people at the front door. The wardrobe company denied causing any damage to the respondent's property.

15. Similarly, the applicant says the respondent complained about her mattress, alleging the movers left dirty handprints on her walls and could have damaged her stairs, and refused to allow the applicant to bring in a bedframe (more on this below). I infer from the context the applicant's movers moved her mattress from the respondent's garage up to the applicant's room on November 7. The applicant provided an email from the movers' organization confirming the movers caused no damage while taking the mattress upstairs, which the respondent does not dispute.

16. For her part, the respondent says the delivery people did enter the townhouse with the wardrobe but left with it after unsuccessfully trying to get it past the turn in her stairs, damaging her walls in the process. The respondent submitted 2 undated photos and an undated video showing 2 holes in the walls and some paint damage, which she says were caused by the delivery people when they tried to fit the wardrobe up the townhouse's internal stairs.

17. As noted above, the applicant bears the burden of proving her claims. However, I find that as the party alleging property damage, the respondent must prove the applicant did or would likely have damaged the respondent's stairwell and walls while moving in her wardrobe and bedframe.

18. Based on the evidence before me, I find it more likely than not the respondent did not permit the applicant's delivery people into the townhouse to move the wardrobe up to the applicant's intended room. While it is undisputed that the applicant was not present for the attempted wardrobe delivery, she provided email evidence from the wardrobe company that the delivery people were prevented from entering the townhouse. I accept the wardrobe company might have had good reason to deny causing any damage, and might not have been entirely neutral. However, I find the

explanation for the denial, that the delivery people were stopped at the door, credible since it is undisputed that the respondent was worried about potential damage. In addition, the respondent's photo and video evidence does not prove who or what caused the damage shown, or when it was caused. The respondent also does not deny that she did not raise any damage with the applicant at the time she claims it happened. For these reasons, I find the wardrobe did not cause damage to the respondent's stairwell and walls as alleged.

19. I also find the respondent did not allow the applicant to move in her bedframe, as the respondent does not dispute this part of the applicant's claim or address it at all. So, I find the bedframe also did not cause any property damage.

20. Even so, I find the respondent did not breach the rental agreement by refusing to allow the applicant to move the wardrobe and the bedframe into her intended bedroom, for the following reasons.

21. The applicant does not dispute that the wardrobe was a large, heavy piece of furniture that was difficult to move and could have damaged the respondent's property. The applicant also does not dispute that she did not measure the wardrobe before arranging its delivery to see if it would fit up the respondent's stairs. It is clear from the parties' submissions that the wardrobe was fully assembled on delivery, and there is no suggestion the applicant tried to disassemble it and move it in pieces to minimize potential damage, which I find would have been reasonable. Given all of this, I find the respondent has shown that moving the fully assembled wardrobe into the applicant's room would likely have caused property damage and that the applicant did not take care to avoid this, contrary to the rental agreement's implied terms.

22. Turning to the bedframe, I find there is little evidence about it, other than the applicant's claim that the respondent refused it and asked the applicant why she needed it. For example, the applicant does not say the bedframe was disassembled and could easily have been moved without damaging the respondent's stairwell or walls. So, I find it was likely not disassembled and easily movable without causing damage. I also find it unlikely the respondent simply refused the bedframe because

it was secondhand and she wanted to make the applicant feel "small", as the applicant says. Rather, I find the fact that the respondent stored the applicant's mattress in her garage for a week before the start of the rental agreement shows she was willing to accommodate the applicant and make the move easier. Also, I find the fact that the applicant's movers did move her mattress into her intended room weakens the applicant's argument about secondhand furniture and the respondent wanting to make the applicant feel small. On balance, I find the respondent did not allow the applicant's bedframe because it would likely have caused damage to the respondent's property, and again, the applicant did not take care to avoid this.

23. Overall, I find the respondent's refusal to allow some of the applicant's furniture did not breach the rental agreement for the reasons above. Instead, I find the applicant chose not to move in when she realized she might not be able to bring all the furniture she wanted with her, after agreeing to rent the room. As the respondent did not breach the agreement, I find the applicant was required to give the respondent 1 month's notice to end it, which she undisputedly did not do. So, I find the applicant breached the agreement.

24. The law of mitigation provides that a non-breaching party to a contract cannot recover losses they could have reasonably avoided (see *Southcott Estates Inc. v. Toronto Catholic District School Board,* 2012 SCC 51). In support of her claim for reimbursement of her November rent, the applicant says the respondent mitigated her damages by re-renting the room from November 15, 2022. The applicant provided a screenshot of an advertisement for the room she says the respondent posted on November 11. However, the respondent submitted correspondence showing she was unsuccessful in securing a new roommate until around December 3. So, I find the respondent was unable to mitigate her damages until that date. In these circumstances, I find the applicant is not entitled to reimbursement of any part of her November 2022 rent. I dismiss this part of her claim.

Damage deposit

25. The applicant also claims reimbursement of her $500 damage deposit. To keep a damage deposit, a landlord must prove the damage to their property on a balance of probabilities (see *Griffin Holding Corporation v. Raydon Rentals Ltd.*, 2016 BCSC 2013 at paragraph 28, and *Buckerfields v. Abbotsford Tractor and Equipment*, 2017 BCPC 185 at paragraph 5).

26. For the reasons above, I find the respondent has not proven the applicant caused damage to the respondent's stairwell and walls as alleged. Also, the respondent did not provide evidence of the value of the damage, such as an invoice or an estimate showing the repair cost. In the absence of proof of the damage's cause and value, I find the respondent is not entitled to keep the damage deposit. I allow the applicant's claim for reimbursement of the $500 deposit.

INTEREST, CRT FEES, AND DISPUTE-RELATED EXPENSES

27. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgment interest on the $500 debt award for reimbursement of her damage deposit from December 6, 2022, the date I find the applicant's notice period would have expired, to the date of this decision. This equals $16.59.

28. 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 the applicant was partially successful, I find she is entitled to reimbursement of half her CRT fees, which is $62.50. The applicant did not claim dispute-related expenses, so I award none. The respondent claims dispute-related expenses of $200 for damage she says the applicant caused to her wall. I dismiss this claim for 2 reasons. First, I find it is not a dispute-related expense but rather a request for a set-off against any amount I award to the applicant, bearing in mind the respondent did not file a counterclaim. Second, for the reasons explained above, I find the respondent has not shown the applicant caused the damage, the value of which I find unproven in any event.

ORDERS

29. Within 30 days of the date of this order, I order the respondent, Rajni Bala, to pay the applicant, Rajdeep Malhi, a total of $579.09, broken down as follows:

    a. $500 in debt for the damage deposit,

    b. $16.59 in pre-judgment interest under the COIA, and

    c. $62.50 in CRT fees.

30. The applicant is entitled to post-judgment interest, as applicable.

31. I dismiss the balance of the applicant's claims and the respondent's claim for dispute-related expenses.

32. 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