



Civil Resolution Tribunal

Date Issued: December 18, 2023

Files: SC-2022-006980 and
SC-CC-2023-000253

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chambers v. Derco*, 2023 BCCRT 1108

B E T W E E N :

SEAN STEVEN GARTH CHAMBERS

APPLICANT

A N D :

JENNIFER LEE DERCO

RESPONDENT

A N D :

SEAN STEVEN GARTH CHAMBERS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is a roommate dispute. This decision relates to 2 linked disputes with the same parties that collectively consist of a claim and counterclaim. So, I have issued a single decision for both disputes.
2. Sean Steven Garth Chambers is the applicant in SC-2022-006980 and counterclaim respondent in SC-CC-2023-000253. Jennifer Lee Derco is the respondent in SC-2022-006980 and the counterclaim applicant in SC-CC-2023-000253.
3. In his claim, Mr. Chambers says he rented a room from Ms. Derco for a 10-month fixed term from September 2022 to June 2023. Mr. Chambers says Ms. Derco evicted him mid-September without notice, in breach of the parties' rental agreement. He claims the following:
 - a. \$100 for moving costs.
 - b. \$450 for double his security deposit, which he says he is entitled to under the parties' agreement,
 - c. \$303.33 for additional rental costs for the remainder of September 2022, and
 - d. \$1,558 in increased rent costs over the remaining 9 months of the parties' 10 month rental agreement.
4. Ms. Derco says they rented a room to Mr. Chambers and a third party, MF. MF is not a party to this dispute. Ms. Derco says they were entitled to evict Mr. Chambers because he endangered Ms. Derco's child and household. Ms. Derco says MF was going stay for the remainder of the 10 month tenancy, but then left without any notice shortly after Mr. Chambers was evicted. Ms. Derco counterclaims \$5,000 for 8 months' lost rent.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. 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.
10. Residential tenancy disputes are generally 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 these ones. So, I find these 2 linked disputes fall within the CRT's small claims jurisdiction for debt and damages under CRTA section 118.

ISSUES

11. The issues in this dispute are:

- a. Did either Mr. Chambers or Ms. Derco breach the parties' agreement?
- b. To what extent, if any, is Mr. Chambers entitled to his claimed damages for moving costs, his security deposit, lost rent, and increased rent?
- c. Is Ms. Derco entitled to \$5,000 for 8 months' rent?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Mr. Chambers must prove his claims on a balance of probabilities (meaning more likely than not). Ms. Derco has the same burden for their counterclaim. I have reviewed all the parties' submissions and evidence but refer only to what I find necessary to explain my decision.
13. Mr. Chambers submitted a copy of the parties' signed tenancy agreement, which is a standard form RTB Residential Tenancy Agreement with an addendum. It lists Mr. Chambers and MF as tenants, and Ms. Derco as the landlord. 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. Under the agreement, Mr. Chambers and MF were required to pay Ms. Derco \$900 monthly rent and a \$450 damage deposit. The agreement was for a fixed 10-month term from September 1, 2022 to June 30, 2023. Under the agreement, Ms. Derco could only end the tenancy as permitted by the RTA, or by mutual agreement with Mr. Chambers and MF. The agreement addendum set out further terms that Mr. Chambers and MF agreed to follow during the rental period, including quiet time from 9 pm to 9 am, among other rules.

Mr. Chambers' eviction

14. It is undisputed that the parties' roommate relationship broke down shortly after Mr. Chambers moved in. Text messages between the parties show that on September 7, 2022, Ms. Derco asked Mr. Chambers to find a new place to live "ASAP", which I find means as soon as possible. In further messages on September 8, 2022, Ms. Derco told Mr. Chambers that their last message was a "polite eviction notice", and told Mr. Chambers his eviction was "effective immediately based on the safety of my family". Mr. Chambers undisputedly moved out on September 15, 2022.
15. Mr. Chambers says Ms. Derco breached the parties' agreement by evicting him without proper notice. For their part, Ms. Derco says they evicted Mr. Chambers because he endangered Ms. Derco's child and household, and they were not required to give Mr. Chambers notice. Ms. Derco alleges that Mr. Chambers failed to lock the door overnight. They also allege Mr. Chambers did not leave his room to check on Ms. Derco's child who was crying in the hallway despite hearing someone outside the house in the early morning of September 3, 2022. Ms. Derco was undisputedly at home at the time of this alleged incident, asleep in her room.
16. For his part, Mr. Chambers says he locked the door the previous evening. He says he heard someone outside on the porch in the middle of the night, and shone a flashlight to see outside. He says the person then left. This is consistent with what Mr. Chambers reported to a third party in online chat messages at 1:17 am on September 3, 2022. Mr. Chambers says he was not worried because the door was locked at the time. Mr. Chambers does not dispute that he heard Ms. Derco's child crying in the hallway downstairs a short time later, but says he decided not to go check on the child because he was new to the house and assumed that Ms. Derco would not want a stranger attending to their child in the night while Ms. Derco was sleeping. I accept this explanation, and it is consistent with what Mr. Chambers told Ms. Derco in text messages on September 7, 2022, after Ms. Derco asked Mr. Chambers to find a new home as soon as possible.

17. I find the evidence before me does not show that Mr. Chambers left the door unlocked as Ms. Derco alleges. Further, while I acknowledge that Ms. Derco was upset that Mr. Chambers did not check on Ms. Derco's crying child, the evidence does not support a finding that Mr. Chambers was required to check on Ms. Derco's child, or that he endangered the child or any other occupant by not doing so.
18. It is also clear from the text messages in evidence that Ms. Derco was unhappy with Mr. Chambers for various other reasons, including parking his motorcycle on the property and his water cooler use, as well as allegedly damaging bathroom taps and drinking alcohol. Mr. Text messages show Ms. Derco agreed to allow Mr. Chambers to park his motorcycle on the property, but was upset when Mr. Chambers parked the motorcycle in the driveway near where Ms. Derco planned to re-stain some stairs. The evidence also does not show Mr. Chambers damaged either the bathroom taps or the water cooler.
19. Mr. Chambers does not dispute that he consumed some alcohol during the tenancy, but says it was only 1 to 2 drinks a night, and he was not disruptive. In any event, the parties' agreement did not restrict alcohol consumption, and the evidence does not support a finding that Mr. Chambers was disruptive or endangered any occupants while consuming alcohol. Overall, I find the evidence does not show that any of Mr. Chambers' actions were in breach of the parties' agreement, or entitled Ms. Derco to end Mr. Chambers' 10-month fixed term tenancy without notice.
20. The parties' agreement said Ms. Derco could only terminate the rental before the end of the fixed term as permitted by the RTA. As noted, I have found the parties' agreement incorporated certain RTA terms. Although Ms. Chambers says she terminated Mr. Chambers for cause, I have found the evidence does not show Ms. Chambers had cause to do so. Even if they did, under the RTA terminating the rental for cause would have required Ms. Derco to give Mr. Chambers at least one month's notice, which they undisputedly did not do. So, I find Ms. Derco breached the parties' agreement by evicting Mr. Chambers on September 8, 2022 without notice.

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.

Mr. Chambers' claimed damages

Security deposit

22. Mr. Chambers claims \$450 for double the security deposit amount he paid. As noted, Mr. Chambers says he is entitled to this under section 4(B)(3)(b) of the parties' agreement. Section 4B(1) and 4B(2) requires the landlord (here, Ms. Derco) to repay the security deposit within 15 days of the tenancy ending or the date the tenant provide a new address, whichever is later, unless the tenant agrees the landlord can keep an amount for damage. Under section 4(B)(3)(b), the landlord must pay double the security deposit amount if not returned as required above.

23. Mr. Chambers provided his forwarding address to Ms. Derco on March 3, 2023. Ms. Derco has undisputedly not returned the security deposit to Mr. Chambers since that time, and the evidence does not show Mr. Chambers agreed that Ms. Derco could keep any portion of it.

24. Ms. Derco also says MF paid the rent and security deposit, not Mr. Chambers. Ms. Derco provided a screenshot of their bank statement that shows MF sent them the \$450 deposit on August 15, 2022. I infer Ms. Derco argues that because Mr. Chambers did not pay them directly, Ms. Derco is not responsible to return the security deposit to Mr. Chambers. The agreement listed \$450 as the security deposit amount. As noted, Ms. Derco rented the room to both Mr. Chambers and MF, and both Mr. Chambers and MF are listed as tenants on the parties' agreement. For his part, Mr. Chambers says he paid \$225 to MF for his half of the security deposit, and then MF paid Ms. Derco. Ms. Derco does not dispute this. So, I find Mr. Chambers likely paid \$225 for half the security deposit to MF, and MF paid Ms. Derco on his behalf. Ms. Derco has not argued or provided evidence to show they returned the

entire \$450 security deposit to MF after MF moved out a short time later. So, I find it likely that Ms. Derco retained the entire \$450 security deposit.

25. Ms. Derco also says Mr. Chambers refused to give back his key and did not clean his room when he moved out. Mr. Chambers disputes this and says he was not allowed to return to clean the room or return his key. Text messages show Mr. Chambers asked to return the key a few days after he moved out, and Ms. Derco said it was too late for him to do so. There is no evidence to show Mr. Chambers left the room dirty, and MF undisputedly still lived in the room when Mr. Chambers was evicted in any event. Given the above, I find Ms. Derco is not entitled to keep any of the security deposit for the key or room cleaning. I find Ms. Derco is responsible to reimburse Mr. Chambers \$450 for double his \$225 security deposit, as required by section 4(B)(3) of the parties' agreement.

Rent refund and increased rent

26. Mr. Chambers initially claimed \$333.33 for his additional rental costs in September 2022 after he was evicted, but in submissions reduced his claim to \$303.33 for additional September rent costs incurred after he was evicted. Mr. Chambers says he paid Ms. Derco \$450 in rent for September 2022, but was not allowed to access the room for the last 15 days of September after he was evicted. He says half his month's rent at Ms. Derco's was \$225, but claims \$303.33 for the additional rent costs he paid elsewhere.
27. Mr. Chambers also initially claimed \$2,646 in increased rent paid at his replacement rentals over the remaining 9 months of the parties' agreement, but in submissions reduced his claim to \$1,558 for increased rent because he says his monthly rent decreased in May 2023.
28. First, the September rent paid to Ms. Derco. As with the security deposit above, Ms. Derco says MF paid for September rent, not Mr. Chambers. Ms. Derco provided a bank statement showing MF paid Ms. Derco \$900 for September 2022. For his part, Mr. Chambers says he paid \$450 to MF for his half of September 2022 rent, and then

MF paid Ms. Derco. Ms. Derco does not dispute this. As with the security deposit, I find Mr. Chambers likely paid \$450 for his share of the September rent to MF, and MF paid Ms. Derco on his behalf. Ms. Derco has not argued or provided evidence to show they returned any portion of Mr. Chambers' \$450 share of the September rent to MF when Mr. Chambers was evicted, or at any time afterwards. So, I find it likely that Ms. Derco retained the entire \$900 September rent payment. I have already found Ms. Derco evicted Mr. Chambers on September 9, 2022, and he moved out on September 15, 2022. So, I find Mr. Chambers is reasonably entitled to reimbursement of \$225 for half his September 2022 rent, when he was unable to access the room in Ms. Derco's home.

29. Turning to Mr. Chambers' increased rental costs. Mr. Chambers provided a signed tenancy agreement for himself and MF with a third party landlord for a new rental beginning on September 18, 2022. Under the new tenancy agreement, MF and Mr. Chambers agreed to pay \$1,400 per month for a fixed term ending April 30, 2023. Mr. Chambers provided text messages from MF that said they were required to pay \$606.67 in rent to move into the new rental for the remainder of September, 2022, or about \$300 each. Mr. Chambers also provided bank statements showing he transferred \$700 to MF monthly between October and April 2023, except for November rent where he only transferred \$400. Mr. Chambers says the remaining \$300 for November was paid through other means, but did not explain further. There is no documentary evidence of further rent payments to MF after April 2023, but Mr. Chambers says he has only been paying \$200 per month in rent since he moved into a new rental in May 2023. Ms. Derco did not dispute any of this evidence. Given the above, I find Mr. Chambers likely paid \$303.33 for his replacement rental for the second half of September 2022, \$700 per month in rent from October 2022 to April 2023, and \$200 per month in rent for May and June 2023. This means Mr. Chambers paid around \$250 more per month for his new rental between October 2022 and April 2023, and \$250 less per month in May and June 2023.
30. In order to show that his eviction caused him to incur additional rental costs during the parties' fixed term tenancy, Mr. Chambers must show that no equivalent

accommodation was reasonably available for the same price. Mr. Chambers says when he was evicted without notice in the middle of September, he only had a few days to find a new rental, and did not have the luxury of finding another rental at a similar price. He says he was surprised he was able to find another rental at all. Ms. Derco did not dispute this, but says that Mr. Chambers' accommodations outside Ms. Derco's house is not their concern.

31. As noted, the evidence shows Mr. Chambers' replacement rental began on September 18, 2022. However, the new tenancy agreement does not show whether Mr. Chambers and MF rented a single room with a shared kitchen and bathroom, as they had at Ms. Derco's home, or more. Mr. Chambers did not provide details about whether his new rental was similar to the room he rented with MF at Ms. Derco's home, or documentary evidence to show that similarly priced rentals were not available. However, given his without-notice eviction mid-month, I accept his submissions that he had little time to find a rental, and it was difficult to do so mid-month. This means I accept that Mr. Chambers' increased rent was incurred, at least in part, as a result of his mid-month eviction. However, given the lack of documentary evidence about the new rental or the availability of similarly priced rentals, I find Mr. Chambers has not proved that his increased rent costs were solely a result of the eviction. So, on a judgment basis, I find Mr. Chambers is entitled to \$800 for increased rent costs incurred during the parties' fixed term tenancy.
32. Mr. Chambers also says he paid \$44 per month for internet at his new rental, which had been included in his rent at Ms. Derco's, and claims this amount as part of his increased rent costs. However, he provided no documentary evidence to support this claimed cost, so I dismiss it.

Moving fees

33. Mr. Chambers claims \$100 for moving costs. These claimed costs include food costs, gas for his vehicle, and his friends' gas and time when helping him moving out. He estimates he paid \$13.69 in gas, and says he would like to pay his 3 friends \$20 each for their help and \$5.50 each for gas. However, Mr. Chambers did not provide any

receipts to show he paid for gas when moving, or evidence to show that he paid his friends to help him move. Finally, Mr. Chambers claims for some food costs when he did not have a kitchen and had to eat out during the move. However, he provided no receipts for these claimed costs, and I find he would have incurred food costs regardless of his eviction. So, I find his claimed moving costs unproven, and I dismiss this aspect of his claim.

34. In summary, I find Mr. Chambers is entitled to a total of \$1,475 in damages for breach of contract.

Ms. Derco's counterclaim for lost rent

35. In their counterclaim, Ms. Derco claims \$5,000 for 8 months in lost rent. Ms. Derco says that shortly after they evicted Mr. Chambers, their other two tenants MF and CR moved out as well. Ms. Derco says that if Mr. Chambers had been a good tenant, Ms. Derco would not have lost their other tenants. It is undisputed that both MF and CR moved out shortly after Ms. Derco evicted Mr. Chambers. As noted, MF shared the room with Mr. Chambers. CR is a third party who was renting another room in Ms. Derco's home. Neither MF nor CR are parties to this dispute.
36. Ms. Derco did not break down the \$5,000 claimed for lost rent as between Mr. Chambers, MF and CR. Ms. Derco did not say how much of the \$5,000 claimed was for Mr. Chambers' rent under the parties' agreement after he moved out on September 15, 2022. However, I have already found that Mr. Chambers did not breach the parties' agreement. I have also found that Ms. Derco evicted Mr. Chambers without notice, in breach of the parties' agreement. Therefore, I find Ms. Derco is not entitled to any compensation for lost rent from Mr. Chambers after they improperly evicted him.
37. Ms. Derco also did not say on what legal basis Mr. Chambers could be legally responsible to compensate Ms. Derco for lost rent from MF and CR, and I find there is none. I find Ms. Derco is not entitled to any compensation from Mr. Chambers for

lost rent from either MF or CR's tenancies. Therefore, I dismiss Ms. Derco's counterclaim.

Interest, CRT fees and expenses

38. The *Court Order Interest Act* applies to the CRT. I find Mr. Chambers is reasonably entitled to pre-judgment interest on the \$1,475 damages award from April 1, 2023 to the date of this decision. This equals \$50.57.

39. 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 Mr. Chambers was partially successful, I find he is entitled to reimbursement of \$87.50 for half his paid CRT fees. Ms. Derco did not pay any CRT fees and was unsuccessful in her counterclaim in any event. Neither party claimed dispute-related expenses.

ORDERS

40. Within 30 days of the date of this order, I order Ms. Derco to pay Mr. Chambers a total of \$1,613.07 broken down as follows:

- a. \$1,475 in damages,
- b. \$50.57 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

41. Mr. Chambers is entitled to post-judgment interest, as applicable.

42. I dismiss Ms. Derco's counterclaim.

43. 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.

Leah Volkers, Tribunal Member