



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Williamson v. Katsnelson*, 2024 BCCRT 59

B E T W E E N :

DARIN MARK WILLIAMSON

APPLICANT

A N D :

PAUL KATSNELSON

RESPONDENT

A N D :

DARIN MARK WILLIAMSON

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. These 2 linked small claims disputes are about a fixed term residential tenancy. The 2 disputes are a claim and a counterclaim involving the same parties, so I have issued a single decision for both disputes.
2. The applicant, Darin Mark Williamson, rented a spare room in his home to the respondent, Paul Katsnelson, for a one year term. Mr. Williamson says Mr. Katsnelson broke the tenancy agreement early and that he lost one month of rent before he could find a new tenant. He claims \$800 in damages.
3. Mr. Katsnelson says he was forced to terminate the tenancy early because of Mr. Williamson's psychological abuse and exposure to secondhand cigarette smoke. Mr. Katsnelson also says Mr. Williamson blocked his attempts to find a replacement tenant. Mr. Katsnelson counterclaims for \$800 which is double the amount of his unreturned security deposit.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
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. 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 in the interests of justice.

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.

Residential Tenancy Act

8. Residential tenancy disputes are generally 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 that Mr. Williamson owns the property and the parties shared a kitchen. So, I find that 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. Was Mr. Katsnelson entitled to end the fixed term tenancy agreement early?
 - b. Does Mr. Katsnelson owe Mr. Williamson \$800 for lost rent?
 - c. Does Mr. Williamson owe Mr. Katsnelson \$800 because Mr. Williamson did not return his \$400 security deposit?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Williamson must prove his claims on a balance of probabilities. Mr. Katsnelson must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that the parties signed a tenancy agreement on May 27, 2022, where Mr. Katsnelson agreed to rent a furnished room in Mr. Williamson's home for a 12-month fixed term beginning June 1, 2022 and ending May 31, 2023. Mr. Katsnelson's

rent was \$800 a month and he paid a \$400 security deposit. The parties also signed an addendum which includes various house rules and chores for Mr. Katsnelson. The addendum states that the agreement is enforceable at the CRT.

12. The agreement is a standard form RTB Residential Tenancy Agreement. 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.

Did Mr. Katsnelson breach the agreement?

13. It is undisputed that Mr. Katsnelson ended his tenancy on September 28, 2022, and told Mr. Williamson that he would be moving out on October 23, 2022. He gave Mr. Williamson a written notice confirming this. Mr. Katsnelson's stated reason for leaving was that work was transferring him to another city. In his submissions, he admits this was not true and he wanted to leave because living in Mr. Williamson's house was intolerable.
14. Mr. Katsnelson relies on section 14 of the agreement which says a tenant may end their tenancy by giving one month's written notice. However, this provision only applies to a monthly, weekly, or periodic tenancy. Mr. Katsnelson had a fixed term tenancy. I find that section 14 of the agreement does not apply to Mr. Katsnelson's fixed term tenancy and that there is no provision in the agreement which allows Mr. Katsnelson to unilaterally end the tenancy early.
15. Mr. Katsnelson says he was forced to terminate the tenancy because of exposure to Mr. Williamson's secondhand smoke. He provided a copy of Mr. Williamson's online advertisement for the room which seeks a non-smoking tenant. He says this was deliberately misleading and that Mr. Williamson covered up the smell of cigarettes with air purifiers and perfumes when he initially viewed the property. He says he had to request modified duties at work because of his exposure to secondhand smoke.
16. Mr. Katsnelson also says he was forced to terminate the tenancy because Mr. Williamson was unreasonable in enforcing the house rules and Mr. Katsnelson's chores. He says Mr. Williamson refused to let him open his window on very hot days,

making his room uninhabitable. He provided text messages from Mr. Williamson which show a strict insistence on following the house rules and completing chores to a high standard. He says Mr. Williamson's text messages and conduct were abusive and disrespectful.

17. Mr. Williamson responds that he was only enforcing the house rules and chores which the parties agreed to and are set out in the addendum. He provided photos, text messages, and a detailed list of examples where he says Mr. Katsnelson breached the addendum. Mr. Williamson says he told Mr. Katsnelson at the initial viewing that he does occasionally smoke in his home. Mr. Katsnelson does not deny this.
18. Mr. Katsnelson relies on RTA section 45.1, which says that a person may end a fixed term tenancy early if there is household violence. He says the secondhand smoke and Mr. Williamson's conduct amount to household violence. The agreement does not specifically incorporate section 45.1 of the RTA and I am not satisfied that this section applies to this dispute. In any event, I find that Mr. Williamson's conduct, though overbearing, did not rise to the level of household violence required by section 45.1. Though I agree that secondhand smoke is dangerous, I accept that Mr. Katsnelson was aware that Mr. Williamson smoked in the home when he signed the agreement.
19. In summary, I find that Mr. Katsnelson was not permitted to terminate the agreement early. I turn to the question of damages.

Does Mr. Katsnelson owe Mr. Williamson \$800 for lost rent?

20. It is undisputed that Mr. Williamson found a tenant who took over Mr. Katsnelson's tenancy and began paying rent on December 1, 2022. Mr. Williamson claims \$800 for the rent which he did not receive in November 2022.
21. Mr. Williamson repeatedly told Mr. Katsnelson that it was his job to find a replacement tenant. However, when a party breaches a contract, the innocent party must take reasonable steps to reduce their financial losses. This concept is called mitigation. If a person could have reduced their financial losses by taking reasonable mitigation

steps, their claim will be reduced accordingly. If they could have eliminated their financial losses entirely, their claim will be dismissed. Mr. Williamson would have been aware of his obligation to mitigate his damages because it was referenced in a previous CRT dispute where he was a party (see *Williamson v. Cawley*, 2021 BCCRT 1276).

22. Mr. Katsnelson says Mr. Williamson failed to mitigate his damages by obstructing his efforts to find a replacement tenant. He says Mr. Williamson was unwelcoming and rude to potential tenants. He says Mr. Williamson insisted that he obtain each potential tenant's federal vaccination record rather than use the BC Vaccine Card Verifier app.
23. Mr. Katsnelson provided text messages from multiple individuals who were interested in renting the room. One individual decided not to accept the tenancy because of the strong smell of cigarette smoke and because he found Mr. Williamson's comments off-putting. Another individual describes the atmosphere in Mr. Williamson's home as unwelcoming. Two individuals refused to provide their federal vaccination record, which is a confidential document, and questioned why Mr. Williamson would not accept proof of vaccination through the BC Vaccine Card Verifier.
24. I agree with Mr. Katsnelson that Mr. Williamson failed to mitigate his damages. While I appreciate that COVID-19 poses a health risk, I find that Mr. Williamson's insistence on obtaining federal vaccination records, rather than simply relying on the BC Vaccine Card Verifier, was unreasonable. I find it most likely that Mr. Katsnelson could have found a replacement tenant for November 2022 if Mr. Williamson had behaved more reasonably and been more respectful to potential tenants. So, I find that Mr. Williamson failed to mitigate his damages and I dismiss his claim.

Does Mr. Williamson owe Mr. Katsnelson \$800 for his security deposit?

25. It is undisputed that Mr. Katsnelson paid a \$400 security deposit, and that Mr. Williamson continues to hold this money. Mr. Katsnelson claims \$800 which is double the amount of his security deposit.

26. Section 4(1) of the agreement says that Mr. Williamson must return the security deposit within 15 days of the end of the tenancy. Section 4(3) says Mr. Williamson must pay Mr. Katsnelson double the security deposit if he breaches section 4(1). However, section 4(1) of the agreement also says that Mr. Williamson does not need to return the money within 15 days if he applies to the RTB to keep the security deposit.
27. As noted above, Mr. Williamson could not apply to the RTB because it does not have jurisdiction over this dispute. In another CRT dispute where Mr. Williamson was a party, *Sood v. Williamson*, 2019 BCCRT 1035, a tribunal member decided that a landlord could comply with this term by applying for dispute resolution at the CRT instead of the RTB. While this decision is not binding on me, I accept the tribunal member's reasoning and apply it here.
28. Mr. Williamson applied for dispute resolution at the CRT on October 22, 2022, and claimed the security deposit. Mr. Katsnelson moved out on October 21, 2022, so this was within 15 days of the end of the tenancy. I find that Mr. Williamson complied with section 4(1) of the agreement and that Mr. Katsnelson is not entitled to payment of double his security deposit.
29. Mr. Williamson does not allege that Mr. Katsnelson damaged his home and I found above that Mr. Katsnelson does not owe any damages for lost rent. There is no basis for Mr. Williamson to keep the security deposit. So, I order Mr. Williamson to pay Mr. Katsnelson his \$400 security deposit.

CRT FEES, INTEREST, AND DISPUTE-RELATED EXPENSES

30. The *Court Order Interest Act* applies to the CRT. Mr. Katsnelson is entitled to pre-judgment interest on the \$400 security deposit from November 4, 2022, 15 days after the end of Mr. Katsnelson's tenancy, to the date of this decision. This equals \$20.97.
31. 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. Mr. Williamson was not successful, so I do not order any reimbursement of his CRT fees. Mr. Katsnelson was partly successful in his counterclaim, so I order that Mr. Williamson pay him \$37.50, being one half of his CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Mr. Williamson to pay Mr. Katsnelson a total of \$458.47, broken down as follows:
 - a. \$400 as repayment of Mr. Katsnelson's security deposit,
 - b. \$20.97 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$37.50 in CRT fees.
33. Mr. Katsnelson is entitled to post-judgment interest, as applicable.
34. 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.

Peter Mennie, Tribunal Member