



Civil Resolution Tribunal

Date Issued: January 29, 2024

File: SC-2023-002333

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lutin v. Desjarlais*, 2024 BCCRT 84

BETWEEN:

MAXIME JACQUES CHRISTIAN LUTIN

APPLICANT

AND:

KYLE DESJARLAIS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This is a roommate dispute. Beginning in December 2022, Kyle Desjarlais¹ rented a room in a house from Maxime Jacques Christian Lutin. Kyle Desjarlais agreed to pay

¹ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the

\$1,100 rent, a security deposit, and share the cost of utilities. Kyle Desjarlais lived in the room for just over 3 months and moved out on March 3, 2023.

2. Mr. Lutin claims \$1,225 for unpaid rent and utilities. Kyle Desjarlais says the parties agreed Mr. Lutin would keep the security deposit. However, they say the amount Mr. Lutin claims in this dispute is not what the parties agreed to. Kyle Desjarlais asks me to dismiss Mr. Lutin's claim.
3. The parties are each self-represented.
4. For the reasons that follow, I mostly allow Mr. Lutin's claim.

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). CRTA section 2 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. CRTA section 39 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 "he said, he 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia

CRT respectfully addresses them throughout the process, including in published decisions. Kyle Desjarlais did not provide a title or pronouns but requested the CRT use their name. In keeping with those wishes, I have done so, and meaning no disrespect, used gender-neutral pronouns where necessary for readability.

Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. CRTA section 42 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 CRTA section 118, 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.
9. Residential tenancy disputes are generally within the Residential Tenancy Branch's (RTB) exclusive jurisdiction under the *Residential Tenancy Act*. However, the RTB declines jurisdiction over roommate disputes like these ones. So, I find this dispute falls within the CRT's small claims jurisdiction for debt and damages under CRTA section 118.

ISSUES

10. The issues in this dispute are:
 - a. Did Kyle Desjarlais breach the parties' agreement? If so, what are Mr. Lutin's damages?
 - b. Did the parties have a binding settlement agreement?
 - c. Is Kyle Desjarlais entitled to a set-off for a security deposit?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as applicant, Mr. Lutin must prove his claims on a balance of probabilities. This means "more likely than not". I have read all the submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. While they filed a Dispute Response that

sets out their basic argument, Kyle Desjarlais did not provide any further submissions or evidence in this proceeding.

12. In December 2022, Mr. Lutin was renting a house from a 3rd party. Kyle Desjarlais agreed to rent a room in the house from Mr. Lutin.
13. A December 3 email from Mr. Lutin to Kyle Desjarlais sets out the parties' agreement. Kyle Desjarlais was required to pay rent of \$1,100 by the 1st of each month and to give 30 days' notice prior to moving out. Mr. Lutin and Kyle Desjarlais would equally pay for utility bills. The agreement did not have a minimum term.
14. The agreement required Kyle Desjarlais to pay Mr. Lutin a security deposit of \$600 and \$100 for keys. Under the agreement, Kyle Desjarlais would get the security deposit back if they gave 30 days' notice, did not damage any room amenities, and left the room clean. In their Dispute Response, Kyle Desjarlais said the security deposit was \$550, not \$600. While ultimately nothing turns on amount of the security deposit, I note an e-transfer receipt shows Kyle Desjarlais paid \$1,800 when they moved in. That amount is consistent with paying \$1,100 in rent, a \$600 security deposit, and \$100 for keys.
15. There is no dispute Kyle Desjarlais paid rent and their share of requested utilities to Mr. Lutin throughout December, January, and February. On March 1, Mr. Lutin says he texted Kyle Desjarlais to ask for the rent, but Kyle Desjarlais said it would be delayed.
16. On March 3, Mr. Lutin says he awoke to Kyle Desjarlais packing to leave. Kyle Desjarlais left the house later that day. Mr. Lutin says Kyle Desjarlais did not give him any notice of their intention to move out prior to packing up.
17. Kyle Desjarlais says they told Mr. Lutin they were choosing to leave but does not say when that conversation occurred. So, given Mr. Lutin's submissions, I find Kyle Desjarlais gave notice on the morning of March 3 and left the same day.

Breach of Contract

18. So, did Kyle Desjarlais breach the parties' contract?
19. It is undisputed Kyle Desjarlais moved out on March 3, but did not pay rent for March. As Kyle Desjarlais moved out after the start of the month, I find they must pay March's rent of \$1,100.
20. Mr. Lutin also claims \$125 towards the cost of hydro and internet bills. However, Mr. Lutin did not provide copies of those bills, so I find that portion of his claim is unproven, and I dismiss it.
21. Kyle Desjarlais says there were a number of issues that caused them to end the agreement. I infer they are arguing that Mr. Lutin breached fundamental, implied terms of the parties' agreement about cleanliness and conduct, and accordingly, they should be relieved from their obligation to pay rent for March.
22. Kyle Desjarlais says the house was not kept clean. They say Mr. Lutin did not disclose a pre-existing dispute with the house's landlord when they agreed to move in. They also allege drug use that made them uncomfortable.
23. However, as noted above, Kyle Desjarlais provided no evidence to support any of their allegations, such as photographs, emails, or text messages. So, even if I were to imply terms about cleanliness or conduct to the agreement, I would not find Kyle Desjarlais has proven they were breached.

Alleged Settlement Agreement

24. Kyle Desjarlais argues that Mr. Lutin's claim is for more money than the parties' agreed to when Kyle Desjarlais moved out. I find they are alleging the parties came to a binding settlement agreement.
25. Kyle Desjarlais says Mr. Lutin initially agreed to keep the security deposit to "cover two weeks" until Mr. Lutin could find a new tenant but withdrew his agreement before

Kyle Desjarlais left the house. Kyle Desjarlais provides no other information about the alleged agreement.

26. For a binding settlement agreement to exist, there must be an offer and acceptance of that offer, without qualification. The agreement does not have to be signed, or even written, to be enforceable. Whether the parties had a consensus, or a “meeting of the minds”, on the contract’s essential terms is determined from the perspective of an objective reasonable bystander and not the parties’ subjective intentions.²
27. I find that is not the case here. While I find the parties likely engaged in discussions about how to address rent and the security deposit, Kyle Desjarlais admits Mr. Lutin did not ultimately agree to any terms before they moved out. I am also unable to determine what impact the parties’ alleged agreement would have on Mr. Lutin’s claims, as they don’t address the last 17 days of March. So, I find the parties never came to a binding agreement.

Set Off for Security Deposit

28. Kyle Desjarlais did not file a counterclaim for the security deposit’s return, but I infer they are asking the security deposit be set off against the rent they owe. A set off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. When a party alleges a set off, the burden of proving the set off is theirs, including proving what damages arise from the breach.³
29. The parties’ agreement is clear that the security deposit will only be returned in three circumstances: if none of the room’s amenities are damaged, if the room is left clean when vacated, and if Kyle Desjarlais provides 30 days’ notice.
30. Mr. Lutin did not allege Kyle Desjarlais caused any damage or left their room unclean, but as I found above, they did not provide 30 days’ notice before moving out.

² See: *Salminen v. Garvie*, 2011 BCSC 339, at paragraphs 24 to 27.

³ See: *Wilson v. Fotsch*, 2010 BCCA 226 and *Dhothar v. Atwal*, 2009 BCSC 1203

31. Kyle Desjarlais moved out, without notice, on March 3. 30 days' notice would go to April 2. While Mr. Lutin did not claim rent for April, I find he would be entitled to the security deposit towards April's rent in any event. So, I find Kyle Desjarlais has not proven they are entitled to the any set off for the security deposit.

Conclusion

32. The *Court Order Interest Act* applies to the CRT. Mr. Lutin is entitled to pre-judgment interest on the unpaid rent from March 1, 2023, when rent was due, to the date of this decision. This equals \$48.35.

33. Under CRTA section 49 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. However, neither party paid any CRT fees. Mr. Lutin also did not claim for any dispute-related expenses. So, I do not make any order about fees or expenses.

ORDER

34. Within 14 days of the date of this order, I order Kyle Desjarlais to pay Mr. Lutin a total of \$1,148.35, broken down as follows:

- a. \$1,100 in unpaid rent, and
- b. \$48.35 in pre-judgment interest under the *Court Order Interest Act*.

35. Mr. Lutin is entitled to post-judgment interest.

36. I dismiss Mr. Lutin's remaining claims.

37. Under CRTA section 58.1, 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.

Christopher C. Rivers, Tribunal Member