



Civil Resolution Tribunal

Date Issued: February 6, 2024

File: SC-2023-002164

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Judge v. Pinero*, 2024 BCCRT 118

BETWEEN:

MICHAEL RICHARD PHILLIP JUDGE

APPLICANT

AND:

ALEJANDRO MARCELO PINERO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a roommate dispute.
2. Michael Richard Phillip Judge rented a room in a house where Alejandro Marcelo Pinero was the “head tenant”, meaning the person who had a rental agreement with the landlord. Mr. Judge says he decided to move out because Mr. Pinero’s behaviour

was making him feel unsafe. He says Mr. Pinero then locked him out of the house and refused to return his security deposit, despite Mr. Judge not having caused any damage. Mr. Judge claims \$1,971 for his deposit, partial rent reimbursement, and allegedly stolen kitchen items.

3. Mr. Pinero denies Mr. Judge's claims. He says he never received a deposit or rent from Mr. Judge, and he has no knowledge of Mr. Judge's missing kitchen items. He also says Mr. Judge owes him \$975 for 1 month's rent. As Mr. Pinero did not file a counterclaim, I infer he requests a set-off against any award I make to Mr. Judge.
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)*. CRTA section 2 states 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. In some respects, the 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 I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.
7. Section 42 of the CRTA says the CRT may accept as evidence information it considers relevant, necessary, and appropriate. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

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. First, the Dispute Notice incorrectly shows Mr. Pinero's name as "Alex Marcelo Pinero." However, Mr. Judge now agrees Mr. Pinero's correct legal name is "Alejandro Marcelo Pinero" as written in the Dispute Response. So, I have amended the style of cause above to show Alejandro Marcelo Pinero as the respondent.
10. Second, Mr. Judge submitted all of his evidence after the deadline for evidence submission. Mr. Pinero did not object to the late evidence. As Mr. Pinero had the opportunity to respond to Mr. Judge's late evidence, I find no prejudice arises. In line with the CRT's mandate to be flexible, I admitted the late evidence, and I have considered it and Mr. Pinero's response in coming to my decision.
11. Third, 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 this one. So, I find the RTA does not apply, and this is a contractual roommate dispute within the CRT's small claims jurisdiction over debt and damages.

ISSUES

12. The issues in this dispute are:
 - a. Did Mr. Pinero breach the parties' agreement, and if so, what are Mr. Judge's damages?
 - b. Is Mr. Judge entitled to reimbursement for his allegedly stolen kitchen items?
 - c. Is Mr. Pinero entitled to a \$975 set-off for unpaid rent?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Judge must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to information I find necessary to explain my decision.

Background

14. On January 30, 2023, Mr. Judge signed a "3 month sublet" with BGK beginning February 1, 2023. BGK is not a party to this dispute. However, from the parties' submissions and evidence, it appears BGK had a roommate agreement with Mr. Pinero. Further, it appears BGK initially sublet their room to another person, KB. Bank records and text messages in evidence show Mr. Judge paid KB \$1,845: \$945 for February's rent and \$900 for a deposit. Mr. Pinero denies receiving Mr. Judge's deposit or February rent. However, the evidence also shows KB forwarded Mr. Pinero the \$945 they received for Mr. Judge's February rent, and advised Mr. Pinero to transfer the \$450 deposit they had undisputedly paid him to Mr. Judge. KB also gave \$450, the other half of Mr. Judge's deposit, to BGK. Through this somewhat complicated flow of payments, I find Mr. Pinero received \$945 for Mr. Judge's February rent and \$450 for half of his deposit.
15. On February 7, 2023, Mr. Judge signed a 3-month fixed-term agreement directly with Mr. Pinero, renewable upon expiry. The agreement provided for a 1-month notice period if Mr. Judge moved out at the end of the 3-month term. It also said deposits would be returned within 2 weeks of Mr. Judge moving out, if the room was clean and undamaged, and if Mr. Judge had not moved out before the end of the 3-month term. The agreement did not incorporate any RTA provisions.
16. On February 19, Mr. Judge texted Mr. Pinero to suggest the parties agree to amend the contract by allowing Mr. Judge to move out immediately and return his deposit if everything was "how it was at move in". Mr. Judge said he had concerns for his safety, though he did not describe those concerns beyond saying Mr. Pinero had exhibited

“erratic behaviour”. The parties exchanged text messages about finding a replacement roommate. Mr. Pinero eventually agreed that if Mr. Judge found an acceptable replacement for March 1 and had not caused any damage, he would return Mr. Judge’s deposit. I find this text message amended the parties’ signed contract to allow Mr. Judge to move out early on the terms described.

17. The evidence shows Mr. Judge secured an acceptable replacement roommate for March 1. However, it appears this arrangement fell through because in a February 24 text message, Mr. Pinero told Mr. Judge he had forfeited his deposit by breaking the parties’ contract, and Mr. Judge did not want to leave without his deposit.
18. On February 25, Mr. Pinero told Mr. Judge he had changed the house’s door codes because Mr. Judge had damaged the front door and its components by repeatedly slamming it, and had deliberately “cranked” the heat in his room. The parties exchanged text messages on February 26, but there is no evidence of further correspondence, or that Mr. Judge returned to the house after that.

Allegations of contract breach and stolen kitchen items

19. As noted above, I find the parties amended their signed contract by text message on February 19 to allow Mr. Judge to move out early and recover his deposit in return for finding an acceptable replacement roommate and not having caused any damage.
20. I find Mr. Pinero repudiated the amended contract. Repudiation is when a party indicates to another party it no longer intends to be bound by their contract (see *Mantar Holdings Ltd. V. 0858370 B.C. Ltd.*, 2014 BCCA 361). I say this because Mr. Pinero told Mr. Judge he had forfeited the deposit by ending the contract early, even though Mr. Pinero had 1) agreed to allow Mr. Judge to move out early, 2) already approved the replacement roommate, and 3) not yet identified any damage Mr. Judge had allegedly caused.
21. I find Mr. Pinero further breached the contract by changing the door codes on February 25, preventing Mr. Judge from accessing the house. I note the photos of the damage Mr. Pinero says Mr. Judge caused show wear and tear to a door frame,

a keypad that is not obviously broken, and a door handle missing its integrated lock. I find these undated pictures do not prove Mr. Judge caused the damage, which Mr. Judge denies in any case. Mr. Pinero submitted texts from another roommate agreeing Mr. Judge was “making himself heard”. Again, I find this insufficient to prove Mr. Judge caused the damage as alleged. In addition, I find a heating bill Mr. Pinero submitted does not show Mr. Judge used an excessive amount of heat, since it includes periods both before Mr. Judge moved in and after he moved out.

22. Even if Mr. Pinero had proven these damages, I find he would not have been entitled to lock Mr. Judge out of the house, since Mr. Judge had paid rent for February.
23. 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 Mr. Pinero would have reimbursed Mr. Judge his deposit and not locked him out of the house. In these circumstances, I find Mr. Judge is entitled to reimbursement of his \$450 deposit from Mr. Pinero. I also find he is entitled to rent reimbursement for the 4 February days he was locked out. I find this amounts to \$126 ($\$945 / 30 \times 4$). I used 30 days per month to calculate the daily rate, based on an average number of days in February, March and April, the 3 months of the parties' initial contract.
24. Mr. Judge claims an additional \$900 for double the deposit because Mr. Pinero did not return the deposit within 2 weeks. Mr. Judge bases his claim on the RTA. However, as noted above, the RTA does not apply to this dispute and the parties did not incorporate its terms into their contract. So, I dismiss this part of Mr. Judge's claim. Even if the RTA did apply, since I have found Mr. Pinero only had \$450 of Mr. Judge's deposit, Mr. Judge may only have been entitled to an additional \$450, not the claimed \$900.
25. Finally, I turn to the allegedly stolen kitchen items. Mr. Judge says he was unable to retrieve a \$23 pot and \$13 dishwasher pods from the house while he was locked out. I find there is no evidence these items remained in the house after Mr. Judge was locked out, particularly as it appears he had removed all his other belongings before

Mr. Pinero changed the door codes. I find this part of Mr. Judge's claim unproven, and I dismiss it.

26. In total, I find Mr. Judge is entitled to \$576 in damages: \$450 as reimbursement for his deposit, and \$126 for the 4 days he was locked out of the house.

Set-off

27. Mr. Pinero requests a set-off of \$975 for March rent. 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 balance. Based on the parties' contract amendment, I find Mr. Judge did not owe Mr. Pinero rent for March. So, Mr. Pinero is not entitled to a set-off. Also, I note Mr. Pinero did not explain his request for \$975 when Mr. Judge's rent was undisputedly only \$945. I decline Mr. Pinero's request for a set-off.

28. The *Court Order Interest Act* applies to the CRT. Mr. Judge is entitled to pre-judgment interest on the \$576 damages award from February 25, 2023, the date Mr. Pinero changed the door codes and a date I find reasonable, to the date of this decision. This equals \$26.26.

29. 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. Judge was partially successful, but he did not pay fees or claim dispute-related expenses, so there is nothing to reimburse.

ORDERS

30. Within 30 days of the date of this order, I order Mr. Pinero to pay Mr. Judge a total of \$602.26, broken down as follows:

- a. \$576 in damages, as reimbursement for a deposit and partial rent, and
- b. \$26.26 in pre-judgment interest under the *Court Order Interest Act*.

31. Mr. Judge is entitled to post-judgment interest, as applicable.
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