



Civil Resolution Tribunal

Date Issued: February 29, 2024

File: SC-2023-002540

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goyal v. Muzzi*, 2024 BCCRT 207

B E T W E E N :

PRADEEP GOYAL

APPLICANT

A N D :

ANDREA MUZZI BITTENCOURT DE OLIVEIRA and FLAVIO
OLIVEIRA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a roommate dispute.

2. Pradeep Goyal rented a furnished room, with a shared kitchen, from Andrea Muzzi Bittencourt de Oliveira and Flavio Oliveira. Mr. Goyal says he had to move out after one night, for the following reasons:
 - The respondents did not provide the promised amount of kitchen storage space, so he could not cook.
 - The respondents did not provide sufficient storage space in the bathroom, and removed his items from the bathroom counter.
 - When he agreed to rent the room, the respondents did not disclose that they had dogs. The dogs barked continuously, which interfered with his work.
 - The respondents' 2 cats entered his room several times.
 - He could not sleep due to frequent noise from the heating system.
3. As a remedy, Mr. Goyal requests an order that the respondents refund him his \$500 security deposit, \$1,000 he paid in rent, and \$900 for moving expenses. This totals \$2,400.
4. The respondents deny Mr. Goyal's claims. They also say Mr. Goyal caused water damage in the room, and did not return their keys, so they incurred repair expenses over \$500. As the respondents did not file a counterclaim, I infer they request a set-off against any award to Mr. Goyal.
5. The parties are all 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 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.

7. 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, they 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, no party requested an oral hearing. Also, 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. I find that I can properly assess and weigh the documentary evidence and submissions before me. 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.
8. 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 court.
9. 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 shared accommodation disputes, such as 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.

Unreadable Evidence

10. Mr. Goyal provided a written submission in this dispute, as well as six evidence items. Unfortunately, for technical reasons that were not Mr. Goyal’s fault, I was unable to open any of the 6 evidence items.

11. CRT staff contacted Mr. Goyal by telephone and email on February 7, February 12, and February 21, 2024, to give him an opportunity to re-submit his evidence. The staff member communicated deadlines for providing the evidence, with the final deadline set on February 23, 2024. Despite these communications, including a telephone conversation on February 21, 2024, Mr. Goyal did not re-submit his evidence.
12. Since Mr. Goyal has had a reasonable opportunity to re-submit his evidence and has not done so, I find it is appropriate to decide this dispute without Mr. Goyal's evidence. In making this procedural decision, I have considered the CRT's mandate, which includes speed, economy, informality, and flexibility.
13. Also, based solely on the titles Mr. Goyal gave the evidence items, it appears they would not have changed the outcome of this dispute. Four of the evidence items are proof of moving costs, and one was proof that he paid the \$500 security deposit. I accept that Mr. Goyal paid these expenses as claimed, as set out in his submissions.
14. The final unreadable evidence item is titled, "proof that no physical key is needed to lock and unlock the door". I accept that assertion, and I address the issue of the key in my reasons below.

ISSUES

15. The issues in this dispute are:
 - a. Is Mr. Goyal entitled to a refund of \$1,000 in rent or reimbursement of \$900 in moving expenses?
 - b. Is Mr. Goyal entitled to a refund of the \$500 security deposit?

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, Mr. Goyal, as applicant, must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
17. The parties did not have a written rental contract, and there are no text messages or emails in evidence setting out the terms of the parties' agreement. Verbal agreements are enforceable, but it can be more difficult to prove what terms the parties agreed to.
18. It is undisputed that Mr. Goyal agreed to pay \$1,000 per month in rent for a furnished room in the respondents' home, with access to the kitchen and a shared bathroom.
19. Mr. Goyal says that in late January 2023, he paid the respondents \$1,000 for February 2023 rent, plus a \$500 security deposit. Mr. Goyal says he moved in on February 5, 2023. The respondents do not dispute this information, so I accept it is accurate.
20. In his CRT submission, Mr. Goyal says he moved out on February 6, 2023, after only one night. In a witness statement, Mr. Oliveira's coworker, V, says they watched Mr. Goyal move his belongings out on February 7, 2023. I find V's statement is consistent with the text messages in evidence. In a February 7, 2023 text to Mrs. Muzzi, Mr. Goyal wrote, "I will move out ASAP since there are several issues..." Based on the evidence, I find Mr. Goyal moved out on February 7, 2023.

Rent Refund and Moving Expenses

21. Mr. Goyal says the respondents should refund his \$1,000 rent payment for February 2023, and compensate him for \$900 in moving expenses, because they did not provide what they had agreed to. In essence, he argues the respondents breached the verbal rental contract.
22. First, Mr. Goyal says the respondents did not provide the promised amount of storage space. He says they provided insufficient kitchen storage, so he could not cook or

eat. He also says they did not provide sufficient bathroom storage, and removed his items from the bathroom counter.

23. I find the parties did not have a verbal or other agreement about storage space. The Craigslist advertisement in evidence does not mention storage. Also, the text messages in evidence show that after the respondents provided the door code, Mr. Goyal wrote that he had forgotten to ask during his visit whether he could store items in the kitchen. Mrs. Muzzi replied that they could provide some separate storage.
24. I find this evidence shows the parties had no specific agreement about storage. So, even if the respondents did not provide storage, this would not breach the rental agreement.
25. The respondents provided photographs of the kitchen, including an empty cupboard they say was cleared for Mr. Goyal's use. Mr. Goyal says this cupboard was too tall to reach easily. However, based on the evidence, I find the respondents did not promise any particular type or location of kitchen storage. Also, I do not accept that Mr. Goyal could not cook or eat in the kitchen due to lack of storage. The photos show his room opened directly into the kitchen, and he did not explain why he could not keep his items in a box in his room and carry them out as needed.
26. Similarly, I find no evidence that the parties agreed to any amount or location for bathroom storage. Mr. Goyal admits the respondents provided a shelf for his use, but he says could not shower due to lack of storage space for his towel and soap. Again, I find Mr. Goyal could have carried his items with him as needed.
27. For these reasons, I find the respondents did not breach any agreement about storage space.
28. Second, Mr. Goyal says that when he agreed to rent the room, the respondents did not disclose that they had dogs in the house. He also said the dogs barked all day, so he could not work. Finally, he says the respondents' 2 cats entered his room several times.

29. The respondents say they told Mr. Goyal about the pets when he first visited the home, before he agreed to move in. They also say Mrs. Muzzi was home all day on February 6, 2023, and the dogs did not bark. The respondents say any barking may have come from the neighbour's puppy, which is not their responsibility.
30. The Craigslist advertisement does not mention pets. However, I find no evidence that the parties' agreement included a pet-free home. This conclusion is supported by the text messages in evidence. On February 3, 2023, which is before Mr. Goyal says he moved in, Mrs. Muzzi texted him about the cats, stating that they were happy and not scared. Mr. Goyal replied, "Oh that's nice, they are very friendly." Then, on February 5, 2023, Mrs. Muzzi texted Mr. Goyal to say the dogs would be in the backyard for five minutes. Mr. Goyal replied, "OK, I just saw the message."
31. I find these text messages do not support the conclusion that the respondents had not told Mr. Goyal about their pets. Rather, the text messages indicate he knew about them, and there is no evidence he raised any objections to them before he moved in, or even before he moved out.
32. Mr. Goyal has not explained why he could not close his room's door to keep the cats out. He has also not provided evidence, such as a recording or witness statement, to support his claim that the dogs' barking was loud enough and long enough to interrupt his work.
33. For these reasons, I find Mr. Goyal has not proved the respondents breached the rental agreement by having pets, or due to noise from barking.
34. Third, Mr. Goyal says he could not sleep due to frequent noise from the heating system. The respondents say the noise is not excessive, and they have had other tenants in the room for long periods who did not complain.
35. Quiet use and enjoyment is an implied term in a residential rental contract. However, I find Mr. Goyal has not proved his claim of unreasonable noise. He did not provide evidence of the noise's volume or duration, such as a recording or witness statement.

36. Also, I agree with the respondents that Mr. Goyal did not raise any of his complaints with them, or give them an opportunity to address the alleged problems, before moving out. Rather, the evidence shows that on February 7, 2024, Mr. Goyal texted Mrs. Muzzi stating that he would move out “ASAP”, since “there are several issues and it does not suit my requirements.” Mrs. Muzzi replied that it was not expected, and they had turned away other potential tenants. She also said he did not have to move “ASAP”, as the room was paid for the month.
37. A material breach of contract is a breach that is so substantial that it makes continuing with the contract impossible or almost impossible. Essentially, Mr. Goyal argues that the respondents materially breached the rental contract, so he could no longer live in the room he rented. I find these texts show that Mr. Goyal did not give the respondents any chance to fix the alleged breaches before he moved out. So, I find Mr. Goyal has not proved a material breach.
38. I dismiss Mr. Goyal’s claims for a rent refund and moving expenses.

Security Deposit

39. The parties agree Mr. Goyal paid a \$500 security deposit. However, there is no indication that they discussed or agreed to terms about when the respondents would be entitled to keep the security deposit.
40. The respondents say they incurred expenses for removing a cup ring from the fireplace, and for replacing laminate flooring Mr. Goyal allegedly damaged. However, I find this damage is unproven. The respondents provided no pre-occupancy inspection report, and did not provide photos showing the room’s condition before Mr. Goyal moved in. So, I find the respondents are not entitled to keep any portion of the security deposit for cleaning and repairs.
41. Also, the respondents say Mr. Goyal did not return his keys. They say they had to have a locksmith change one door key. However, they provided invoice showing that a contractor replaced keys for seven different doors on February 24, 2023, at a cost of \$495 plus tax. The respondents did not explain why they changed multiple keys,

and they provided no evidence of how much it cost to replace the single key they had to replace due to Mr. Goyal.

42. Since Mr. Goyal does not dispute that he received keys and did not return them, I find, on a judgment basis, they are entitled to keep \$50 of the security deposit for key replacement. I order that the respondents must return the remaining \$450 of the security deposit to Mr. Goyal.
43. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. Goyal is entitled to pre-judgment interest on \$450 from March 1, 2023 (the date his paid rental ended). This equals \$21.77.
44. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Mr. Goyal was partially successful in this dispute, so I order reimbursement of half his CRT fees, which equals \$62.50. No party claims dispute-related expenses.

ORDERS

45. I order that within 30 days of this decision, the respondents must pay Mr. Goyal a total of \$534.27, broken down as follows:
 - a. \$450 as refund of the security deposit,
 - b. \$62.50 as reimbursement of CRT fees, and
 - c. \$21.77 in pre-judgment interest under the COIA.
46. Mr. Goyal is entitled to post-judgment interest under the COIA, as applicable.

47. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Tribunal Member