



# Civil Resolution Tribunal

Date Issued: March 6, 2024

File: SC-2022-010038

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hamada v. Kennedy*, 2024 BCCRT 225

BETWEEN:

SIRINE HAMADA

**APPLICANT**

AND:

SUSAN KENNEDY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This is a roommate dispute. The applicant, Sirine Hamada, rented a room from the respondent, Susan Kennedy. The applicant says she was forced to leave after only 2 weeks, and seeks \$975, for unused rent and the return of her damage deposit.
2. The respondent says the applicant chose to leave and did not give proper notice. She denies owing the applicant any money.

3. Both parties represent themselves.

## **JURISDICTION AND PROCEDURE**

4. 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. In resolving disputes, the CRT must apply principles of law and fairness.
5. Section 39 of the CRTA says that 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. 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.
6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
7. 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.
8. 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.

## **ISSUE**

9. The issue in this dispute is whether the respondent must refund the applicant for unused rent or her damage deposit.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. The parties signed a Roomer/Landlord Agreement on November 15, 2022. The relevant terms are that the applicant would move in starting November 15, 2022 and pay a \$475 damage deposit and \$950 monthly rent due on the 15th of each month. The agreement also provided that either party was required to give 30 days’ notice to terminate the agreement on the last day of the month when the 30 day period expired.
12. The applicant paid \$1,425 in two instalments on November 14 and 15, 2022.
13. The parties’ relationship undisputedly deteriorated. The applicant says the respondent threatened her with a knife, so she called the police and moved out the next day. So, she asks for the return of her unused rent and her \$475 damage deposit. The applicant does not explain on what date the knife incident allegedly happened.
14. The respondent denies ever threatening the applicant. The respondent says she was making dinner, which included chopping vegetables, and the applicant started an argument, went upstairs and shockingly called the police. The respondent says the police removed the applicant from her home. The respondent specifically says she did not kick the applicant out. The respondent says the applicant is not entitled to any refund because she did not provide 30 days’ notice, as required by the parties’ agreement.

15. I find it is an implied term of the parties' agreement that the parties would treat each other with respect and not intimidate each other during their co-tenancy. The difficulty for the applicant is that she did not provide any evidence supporting her version of events, such as the police report. Although she provided a witness statement from a friend, that friend admittedly did not witness the parties' argument and just repeated what the applicant told them happened. So, I place no weight on that statement. Here, I find the applicant has not proven she was entitled to terminate the parties' agreement due to a safety concern. Put another way, I find the applicant has not proven the respondent breached the agreement's implied term.
16. So, I find the applicant is not entitled to a rent refund.
17. As for the damage deposit, the parties agree the applicant paid \$475. However, there is no indication that they discussed or agreed to terms about when the respondent would be entitled to keep the deposit.
18. The respondent says she had to "scrape to pay bills" after the applicant left without notice. I infer she is arguing a set off. 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.
19. Here, I find the respondent has not shown that the applicant damaged the home, so the applicant would be entitled to a refund of her damage deposit. However, I find the parties' agreement is clear the applicant was required to give 30 days' notice before leaving the home. I find the applicant breached the parties' agreement by failing to give proper notice. Had the applicant given proper notice, she would have had to pay rent until January 15, 2023. She undisputedly only paid until December 15, 2022. The \$950 rent owing for December to January is more than the \$475 damage deposit. So, setting off these amounts, I find the applicant is not entitled to any refund. I dismiss the applicant's claims.
20. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As the

applicant was not successful, I dismiss her claim for reimbursement of tribunal fees. The respondent was successful but did not pay any tribunal fees or claim dispute-related expenses.

## **ORDER**

21. The applicant's claims, and this dispute, are dismissed.

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Andrea Ritchie, Vice Chair