Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ihsan v. Yandon*, 2024 BCCRT 287

B E T W E E N :

MUHAMMAD IHSAN and KELSEY SCHOFIELD

APPLICANTS

A N D :

SUMMER ALEXIS OLGA YANDON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Alison Wake

INTRODUCTION

1. This is a roommate dispute. Muhammad Ihsan, Kelsey Schofield, and Summer Alexis Olga Yandon agreed to share a home. The applicants, Mr. Ihsan and Ms. Schofield, say that Ms. Yandon moved out without proper notice. They claim $4,177.74 for unpaid rent and utilities, shared expenses, and “suffering”.

2. Ms. Yandon says that the applicants "constructively evicted" her. She says that she gave proper notice to the landlord, and that she reimbursed the applicants for utilities. I infer she asks me to dismiss this dispute.

3. Mr. Ihsan represents both applicants, and Ms. Yandon represents herself.

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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

5. 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. Here, none of the parties requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me.

6. 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.

7. 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.

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 Ms. Yandon must pay the applicants the claimed $4,177.74 for rent, utilities, shared expenses, and suffering.

EVIDENCE AND ANALYSIS

10. As the applicants in this civil proceeding, Mr. Ihsan and Ms. Schofield must prove their claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. The background facts are undisputed. The parties entered into a one-year fixed-term tenancy agreement with their landlord, SH. The tenancy began on October 1, 2022. The parties agreed to pay SH $3,000 per month in rent, plus 70% of the home's BC Hydro and Fortis bills.

12. In December 2022, Ms. Yandon temporarily left the home to stay with family while she was ill. In January 2023, Ms. Yandon removed her belongings from the home, and gave notice to SH that she would be moving out effective February 8, 2023.

13. The applicants say that they could not find another roommate to replace Ms. Yandon until April 15, 2023. Ms. Yandon undisputedly did not pay rent for February, March, or April 2023. The applicants claim $4,177.74 in unpaid rent costs, utility bills, shared expenses, and "suffering". The applicants have not provided a detailed breakdown of the claimed amount.

Roommate Agreement

14. As noted, the parties undisputedly had a one-year fixed-term tenancy agreement with SH. They provided this agreement in evidence. Although the first page of the agreement lists Mr. Ihsan and Ms. Yandon as the "landlords", SH signed the remaining agreement pages as the "landlord". It is clear from the parties' other

evidence and submissions that SH is the landlord, and the applicants and the respondent were tenants.

15. So, I find the written tenancy agreement in evidence is between the three parties as tenants, and SH as their landlord. It is not an agreement between the parties themselves, as roommates.

16. The applicants say that they had an agreement with each other and Ms. Yandon about their roommate relationship, including household duties. There is no written roommate agreement in evidence, so I infer the agreement was verbal. It is undisputed that the parties split the rent three ways, with each paying $1,000 per month. The parties also agreed to split the utilities three ways, except when one of them was away from the home for an extended period. I return to this below.

17. The applicants say that when they were discussing living together with Ms. Yandon, they all agreed that if any issues arose between them during the tenancy, they would finish the one-year lease and then go their separate ways. I accept this, as Ms. Yandon does not dispute it and I find it is consistent with the one-year lease with SH.

18. The applicants essentially argue that Ms. Yandon breached this agreement by moving out before the end of the lease. In contrast, Ms. Yandon says that the applicants constructively evicted her. She says that the applicants excluded her from outings and cooking meals together. She says their interactions became negative, and she felt anxious and uncomfortable at home.

19. Previous CRT decisions have found that roommate agreements generally include an implied term that the parties will treat each other respectfully and safely during their tenancy.[1] Though previous CRT decisions are not binding on me, I find it appropriate to imply this term here. However, I find that Ms. Yandon has not proven that the applicants breached this implied term.

[1] See, for example, *McNamara v. Farry,* 2023 BCCRT 331, and *Hamada v. Kennedy*, 2024 BCCRT 225.

20. There is no evidence before me that the parties specifically agreed that they would go on outings or cook meals together as roommates. While I accept that Ms. Yandon perceived some social tension between herself and the applicants, I find this does not mean that the applicants were disrespectful, or acted in a way that would endanger Ms. Yandon's safety. Text messages in evidence show that the applicants' communication with Ms. Yandon was generally respectful, even when communicating that they felt she was not adequately addressing her household responsibilities such as cleaning and taking out the garbage and recycling. There is no evidence before me to support a finding that the applicants breached the implied term of respectful and safe treatment.

21. Ms. Yandon also argues that the applicants breached her privacy by going through her room while she was away. While the applicants admit to entering Ms. Yandon's room, they say they only did so to open the window, as Ms. Yandon had been away for several days and moldy items in her room were causing odors in the home. While the applicants say Ms. Yandon did not set any boundaries regarding entering her bedroom, I find it is an implied term of their roommate agreement that the parties will generally respect each other's privacy, including not entering each other's rooms unless necessary. However, I find the applicants' explanation about opening the windows is reasonable in the circumstances, as Ms. Yandon does not dispute leaving moldy, odor-causing items in her room.

22. So, I find the applicants did not breach the verbal roommate agreement. Instead, I find Ms. Yandon breached the agreement by moving out before the lease's end date.

Damages

23. Damages for breach of contract put the innocent parties in the same position that they would be in if the contract had been performed.[2] Here, if the contract had been performed, Ms. Yandon would have continued paying rent for the remainder of the fixed-term lease, until October 1, 2023.

[2] *Water's Edge Resort v. Canada (Attorney General),* 2015 BCCA 319 at paragraph 39.

24. Ms. Yandon says that she offered to have her brother move in for the remainder of the lease, but the applicants refused. The applicants do not dispute this, but say that they were not comfortable with Ms. Yandon's brother moving in because he had been aggressive towards them. This is supported by a message in evidence from Ms. Yandon's brother to Mr. Ihsan with a generally aggressive and confrontational tone. Based on this message, I find it was reasonable for the applicants to refuse Ms. Yandon's brother as a replacement tenant. There is no evidence before me that Ms. Yandon made any other efforts to find a replacement roommate.

25. However, the applicants were also obligated to mitigate their damages. This means that they must take reasonable steps to reduce the loss resulting from the breach.[3] Here, I find the applicants did so. They provided a Craigslist advertisement in evidence showing that they advertised Ms. Yandon's former room for rent on February 5, 2023. The applicants say, and I accept, that they could not find anyone to fill the room until April 15, 2023. Ms. Yandon does not allege that the applicants could have found a new roommate sooner than this.

26. While the applicants say they had to lower the rent to find a new roommate, they provided no further details or evidence about the amount they lowered the rent to. So, I find any losses they claim as a result of this are unproven. However, the applicants undisputedly had to pay the full $3,000 in monthly rent for February, March, and half of April 2023. I find the applicants are entitled to Ms. Yandon's share of the rent for these months. This equals $2,500.

27. The applicants also claim an unspecified amount for "suffering". I infer they argue that they suffered mental distress because of Ms. Yandon's breach. Generally, mental distress damages are not awarded in breach of contract cases unless the contract's main purpose was for peace of mind, or a psychological benefit.[4] As neither of these exceptions apply here, I dismiss the applicants' claim for mental distress damages.

[3] *Southcott Estates Inc. v. Toronto Catholic District School Board,* 2012 SCC 51.
[4] *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30.

Debt

28. The applicants also claim outstanding utility bills, but Ms. Yandon says she has paid for utilities up to the date she moved out. I find, based on the parties' submissions and messages in evidence, that the parties generally agreed that if one of them was not residing in the home for an extended period, they would not be responsible for utility costs for that time. So, I find the applicants are not entitled to utility costs after Ms. Yandon moved out. The applicants do not dispute that Ms. Yandon reimbursed them for utilities before she moved out, and they provided no evidence in support of their claim for utility bills in any event. So, I dismiss the applicants' claim for utility bills.

29. The applicants also claim $64.27 for Ms. Yandon's share of shared expenses including groceries, meals out, and other outings. Ms. Yandon does not dispute owing this amount, but says that Ms. Schofield owes her $17 for these activities as well. The applicants agree that Ms. Schofield owes Ms. Yandon $16.57, but says this has already been taken into account in the overall amount owing. In support of this, the applicants provided screenshots from an app that they say the parties used to track shared expenses. These show that Ms. Yandon owes $64.27, which I accept as accurate. As the applicants say the debt is owed to Mr. Ihsan but includes amounts owed by Ms. Schofield, I order Ms. Yandon to pay it to the applicants jointly.

Set Off

30. Ms. Yandon makes several general arguments about the applicants' conduct, including that Mr. Ihsan borrowed some of her belongings and has not returned them, and that some of her belongings were damaged. Ms. Yandon also argues that she did not ask for her $500 share of the damage deposit back when she moved out because she wanted to move forward, but that she would have asked for it if she had known that the applicants were going to make this claim.

31. Ms. Yandon did not file a counterclaim, so I infer she argues she is entitled to a set off. In other words, she is arguing that certain amounts should be deducted from any amount she owes the applicants.

32. The burden is on Ms. Yandon to prove that she is entitled to a set off.[5] I find she has not done so in this case. Ms. Yandon provided an undated photograph in evidence of a broken dish, which the applicants say was accidentally broken in the dishwasher. I accept this, as there is no evidence that the applicants intentionally damaged it. Ms. Yandon also provided no evidence that Mr. Ihsan has failed to return any of her personal belongings. So, I find Ms. Yandon is not entitled to a set off for these items.

33. Lastly, there is no evidence that Ms. Yandon paid the $500 damage deposit to the applicants. The tenancy agreement in evidence requires that the damage deposit be paid to the landlord. So, I find the return of Ms. Yandon's portion of the damage deposit is a matter between her and SH, and I do not award any set off for it against the amounts Ms. Yandon owes the applicants.

INTEREST AND CRT FEES

34. The *Court Order Interest Act* applies to the CRT. The applicants are entitled to pre-judgment interest on Ms. Yandon's unpaid rent from the dates those payments were due to the date of this decision. This equals $129.23. As the shared expenses were incurred on various dates, I award interest on the outstanding $64.27 from February 8, 2023, the date Ms. Yandon returned her keys, to the date of this decision. This equals $3.45.

35. 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. The applicants were partially successful, so I find they are entitled to half of their paid CRT fees, or $87.50. None of the parties claimed dispute-related expenses.

[5] *Meszaros v. 464235 B.C. Ltd.,* 2018 BCSC 2033 at paragraph 59.

ORDERS

36. Within 21 days of this decision, I order Ms. Yandon to pay the applicants a total of $2,784.45, broken down as follows:

    a. $2,500 in damages,

    b. $64.27 in debt,

    c. $132.68 in pre-judgment interest under the *Court Order Interest Act*, and

    d. $87.50 in CRT fees.

37. The applicants are entitled to post-judgment interest, as applicable.

38. I dismiss the applicants' remaining claims.

39. This is a validated decision and order. 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.

Alison Wake, Tribunal Member