



Civil Resolution Tribunal

Date Issued: March 26, 2024

File: SC-2023-001478

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sarrazin v. Namiecinska*, 2024 BCCRT 311

BETWEEN:

REBECCA SARRAZIN

APPLICANT

AND:

AGATA NAMIECINSKA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about a rental agreement.
2. Rebecca Sarrazin rented a suite in a house to Agata Namiecinska. Ms. Sarrazin says Ms. Namiecinska did not pay the final month's rent, and did not pay all the utility bills owed. Ms. Sarrazin requests orders that Ms. Namiecinska pay \$1,300 in rent, and

\$97.40 for utilities. Ms. Sarrazin initially requested a higher amount for utilities, but admitted in her submissions that she had failed to include a payment in her calculation.

3. Ms. Namiecinska denies Ms. Sarrazin's claims for rent and utilities. Ms. Namiecinska says Ms. Sarrazin harassed her, and unlawfully evicted her. Ms. Namiecinska also says the Civil Resolution Tribunal (CRT) does not have jurisdiction (legal authority) to decide this dispute, as it falls within the exclusive jurisdiction of the BC Residential Tenancy Branch (RTB).
4. The parties are each self-represented.
5. For the reasons set out below, I dismiss Ms. Sarrazin's claims.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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. As the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
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.

ISSUES

9. The issues in this dispute are:

- a. Does the CRT have jurisdiction to decide this dispute?
- b. Does Ms. Namiecinska owe \$1,300 in rent?
- c. Does Ms. Namiecinska owe \$97.40 for utilities?

REASONS AND ANALYSIS

10. In a civil proceeding like this one, Ms. Sarrazin, as the applicant, must prove her 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.

Does the CRT have jurisdiction to decide this dispute?

11. Ms. Namiecinska says that under *Residential Tenancy Act* (RTA) section 84.1(1), the RTB has sole jurisdiction to decide this dispute.
12. Ms. Sarrazin disagrees. She says the RTB does not have jurisdiction because Ms. Sarrazin did not own the house in which the suite was located. Rather, Ms. Sarrazin says she rented the house from a landlord, who I will refer to as Y in this decision. Ms. Sarrazin says she and her family lived in the house's upper floors, and with Y's permission, she rented the lower-level suite to Ms. Namiecinska. Y is not a party in this dispute.
13. CRTA section 10 says the CRT must refuse to resolve a claim that is outside the CRT's jurisdiction. RTA section 84.1 says the RTB has exclusive jurisdiction over residential tenancy disputes. This means the CRT cannot resolve disputes that the RTB can resolve under the RTA.
14. Ms. Sarrazin argues that because she and her husband are the only tenants listed on the lease with Y, and because she and her husband do not own the house, Ms. Namiecinska was not a tenant for the purposes of the RTA. Ms. Sarrazin says she and her husband are the only tenants.

15. I find this dispute is about the rental agreement between Ms. Sarrazin and Ms. Namiecinska, not the original lease between Ms. Sarrazin and Y.
16. The RTA defines a sublease agreement as a tenancy agreement where the tenant transfers their rights under an original tenancy agreement to a subtenant for a period shorter than the term of the original tenancy, and the subtenant agrees to vacate the unit on a specified date. The RTB's published *Residential Tenancy Policy Guideline 19 Assignment and Sublet* says that where the original tenant remains in the rental unit and rents out space within the unit to others, that is not a sublet under the RTA, and so the RTA does not apply to that rental.
17. I find that is the situation here. I find Ms. Sarrazin remained in the leased house and rented the lower-level suite to Ms. Namiecinska. I find this is similar to a roommate situation, although Ms. Sarrazin and her family admittedly did not share kitchen or bathroom facilities with Ms. Namiecinska. Based on the rental agreements in evidence, I also find that the parties' written rental agreement was not for a term shorter than the original lease with Y, and did not have a specified end date, which are elements of an RTA sublet.
18. Finally, I place significant weight on the fact that the RTB indicated in writing that it would not take jurisdiction over the agreement between Ms. Sarrazin and Ms. Namiecinska. On May 24, 2022, Ms. Sarrazin emailed the RTB, asking for information about how to end Ms. Namiecinska's occupancy. Ms. Sarrazin explained the circumstances, including that she rented the whole house, and then rented a self-contained suite within the house to another person. The RTB replied that Ms. Sarrazin would not meet the RTA definition of "landlord", so the RTB would not be able to assist with a dispute between Ms. Sarrazin and Ms. Namiecinska.
19. Further, I find the RTB's written decision of February 14, 2023 supports the conclusion that the CRT, rather than the RTB, has jurisdiction over this dispute. Ms. Namiecinska applied to the RTB to dispute Ms. Sarrazin's Notice to End Tenancy (Notice). The RTB dismissed the matter as moot, since Ms. Namiecinska had already moved out. However, the RTB arbitrator also cited RTA section 62(4)(a), which says

the RTB should dismiss an application if it does not disclose a dispute that may be determined under the RTA. I find this confirms the RTB's earlier position that it does not have jurisdiction over the rental agreement between Ms. Sarrazin and Ms. Namiecinska.

20. For all these reasons, I find that the rental agreement between Ms. Sarrazin and Ms. Namiecinska is not a sublease agreement, and so it is not a residential tenancy agreement under the RTA. So, I find that the RTB does not have exclusive jurisdiction to hear this dispute. I find the CRT may hear this dispute under CRTA section 118 as debt claims.
21. In making this finding, I rely on and adopt the non-binding but persuasive reasoning in *Poch v. Dookun*, 2021 BCCRT 1112.

Does Ms. Namiecinska owe \$1,300 in rent?

22. The parties signed a written rental agreement on September 13, 2020. The agreement says the occupancy would start on September 20, and would continue on an indefinite month-to-month basis. The rent was \$1,300 per month, payable on the 27th day of each month.
23. Ms. Namiecinska paid a \$650 security deposit.
24. The parties used the RTB's standard Residential Tenancy Agreement form as their written rental agreement. That form refers to and incorporates RTA terms. Ms. Sarrazin says she used the RTB agreement "to ensure fairness for everyone", but that she told Ms. Namiecinska at the time they made the agreement that the RTA did not apply. Ms. Namiecinska disputes this, and says she understood that all terms of the signed contract were valid.
25. The parties agree that Ms. Namiecinska did not pay the final month's rent before moving out. Ms. Sarrazin says this amount is owed under their rental agreement. Ms. Namiecinska says she is not obligated to pay, since Ms. Sarrazin issued notice to end the occupancy.

26. The evidence shows that on April 22, 2022, Ms. Sarrazin's spouse (who is also listed on the rental agreement) emailed Ms. Namiecinska stating that they wanted to end the agreement. He wrote that they had decided to "go in a new direction with the house", by accepting homestay students from a nearby college. He wrote that "starting in July, we will be using the whole house for our family and two students." He said Ms. Namiecinska could have possession until June 20, 2022, or alternatively June 30 if she paid an additional \$433.
27. Ms. Sarrazin gave Ms. Namiecinska a second notice to end the occupancy on May 7, 2022. Ms. Sarrazin used the RTB's Two Month Notice to End Tenancy form. She wrote on the form that she used the RTB's form only for administrative and documentation purposes, even though she was not a landlord. In the Notice form and accompanying letter, Ms. Sarrazin said Ms. Namiecinska must vacate by June 20, 2022, or by June 30, 2022 if she paid an additional \$433. Ms. Sarrazin indicated on the Notice form that the reason for ending the agreement was because she and her spouse would occupy the unit.
28. The parties agree that Ms. Namiecinska moved out on June 20, 2022.
29. Section 14 of the parties' rental agreement addresses how each party may end the occupancy. It says the landlord may end the tenancy only for the reasons and only in the manner set out in the RTA, and the landlord must use the approved RTB Notice form.
30. As explained above, the RTA does not apply to the parties' rental agreement, since they do not meet the RTA definitions of "landlord" and "tenant". However, by signing the written rental agreement, including section 14 as summarized above, I find Ms. Sarrazin agreed to be bound by the RTA's terms for ending the agreement.
31. Under the RTA, there are various reasons a landlord can end a tenancy, including repeatedly late rent payments, unpaid rent or utilities, illegal activity, or putting the property at significant risk. A landlord can also end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. RTA section 49 says

that in order to end a tenancy for this reason, the landlord must give two months' notice.

32. In her CRT submissions, Ms. Sarrazin says there were various reasons why she chose to end the occupancy, including late rent payments, and activities she says were hazardous or illegal. Ms. Namiecinska disputes these allegations.
33. Regardless of what Ms. Sarrazin says now, in both the April 22 and May 7, 2022 notices to Ms. Namiecinska, Ms. Sarrazin and her spouse said they were ending the occupancy agreement because they planned to use the suite for themselves and their homestay students. So, I find that was the reason they ended the tenancy. I find it is unfair and unreasonable to give written notice specifying one reason for ending the tenancy, but now rely on different reasons when seeking unpaid rent.
34. I note that homestay students would not fit within the definition of "close family member" required for a section 49 eviction under the RTA. However, I find it unnecessary to decide that issue, but because in any event, Ms. Sarrazin did not give two months' notice. She gave notice on April 22, 2022, and required Ms. Namiecinska to vacate by June 20, 2022 (unless she paid more money). This was less than two months.
35. Also, under RTA section 51, a tenant is entitled to withhold their final month's rent payment, as compensation for ending the tenancy under RTA section 49.
36. Again, I find Ms. Sarrazin agreed to follow the RTA's requirements for ending the occupancy when she signed the rental agreement which specifies in section 14 that the RTA's tenancy-ending terms apply.
37. Since Ms. Sarrazin did not give two full months' notice, and since Ms. Namiecinska was entitled to withhold one month's rent under RTA section 51, I find Ms. Sarrazin is not entitled to any additional rent. I dismiss this claim.
38. The parties also provided submissions and evidence about alleged damage to the property, and whether Ms. Sarrazin was entitled to keep the \$650 damage deposit.

Since Ms. Namiecinska did not file a counterclaim seeking return of the damage deposit, I make no findings about it.

Does Ms. Namiecinska owe \$97.40 for utilities?

39. Ms. Sarrazin says under the terms of the parties' rental agreement, Ms. Namiecinska was required to pay 40% of the utilities. Ms. Sarrazin that until their relationship deteriorated, her spouse would send Ms. Namiecinska copies of the gas and electricity bills, and Ms. Namiecinska would pay her 40% share. Ms. Sarrazin says Ms. Namiecinska did not pay for her share of the May and June 2022 utilities.
40. Ms. Namiecinska does not deny owing \$97.40 for utilities, but says she should not have to pay because she was wrongfully evicted, and because Ms. Sarrazin cut off her internet access.
41. The parties' written rental agreement includes a series of pre-printed boxes showing which utilities would be included in the rent. The checked boxes include water and internet. The boxes for gas and electricity are not checked, which I find means they were not included in the rent. Under the pre-printed boxes, someone has handwritten "Utilities =". Although the agreement does not say Ms. Namiecinska would pay 40% of hydro and electricity, she does not contest this point.
42. In her CRT submission, Ms. Sarrazin admits that around April 2022, she bought a new internet router and told Ms. Namiecinska they would not give her the password until she paid the outstanding utility bills. As explained above, the rental agreement required Ms. Sarrazin to provide internet service. There is nothing in the agreement that permitted Ms. Sarrazin to withhold internet service.
43. Ms. Sarrazin did not provide internet service for the remainder of Ms. Namiecinska's occupancy, which was supposed to be included in the rent. For this reason, I find, on balance, that it would be unfair to require Ms. Namiecinska to pay the outstanding utility bills for gas and electricity. So, I dismiss this claim.

20. 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. As Ms. Sarrazin was unsuccessful, I dismiss her claim for reimbursement of CRT fees. Ms. Namiecinska paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

22. I dismiss Ms. Sarrazin's claims and this dispute.

Kate Campbell, Tribunal Member