



Civil Resolution Tribunal

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File: SC-2022-009268

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Levesque v. Payne*, 2024 BCCRT 388

B E T W E E N :

JACQUELINE LEVESQUE

APPLICANT

A N D :

COLLIN PAYNE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a tenancy breakdown and an alleged wrongful eviction.
2. Starting in May 2018, Jacqueline Levesque rented a partial basement suite in a home owned by Collin Payne. They shared a kitchen and shower facilities. In November

2022, Mr. Payne gave Ms. Levesque a notice to vacate the rental unit by February 1, 2023. She moved out around that time.

3. Ms. Levesque says the eviction was wrongful. She also says that throughout the tenancy, Mr. Payne threatened to evict her and was verbally abusive. Ms. Levesque claims \$5,000 for infliction of mental distress. She also claims \$0 (presumably because of the \$5,000 monetary limit for small claims at the Civil Resolution Tribunal (CRT)) for lost income, lost opportunities, damage to personal property, and moving expenses. I address the value of her claims further below.
4. Mr. Payne denies being verbally abusive to Ms. Levesque. He says he evicted Ms. Levesque because his daughter was moving back into the home.
5. Each party is self-represented. Ms. Levesque has practiced law but no longer practices. As I explain below, I dismiss Ms. Levesque's claims.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT generally does not have jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTA does not apply to accommodation where a tenant shares a kitchen or bathroom with an owner, which was the case here. So, I find that this dispute falls within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.
7. Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

Credibility

8. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination

of these. The parties in this dispute call into question each other's credibility, or whether they are telling the truth. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, two questions turn on credibility. The first is whether Mr. Payne truly needed the rental unit for his daughter. This is relevant to whether he breached a term in the parties' rental agreement requiring compliance with the RTA. However, I find there is sufficient extrinsic evidence to answer this question. I also find the money at stake for breach of contract damages is likely relatively small despite Ms. Levesque's claim for \$5,000, as I explain below. The second question is the extent to which Mr. Payne verbally abused Ms. Levesque. This question is part of the legal test for the tort of intentional infliction of mental suffering. However, given my conclusion that Ms. Levesque has not satisfied other parts of the test that do not turn on credibility, the extent of the alleged verbal abuse is not determinative. For these reasons, I decided that the benefit of an oral hearing did not outweigh the efficiency of a hearing by written submissions.

Claims and monetary limit

9. As noted, in the Dispute Notice, Ms. Levesque asked for \$5,000 in damages for infliction of mental distress and \$0 for wage loss, opportunity loss, personal property damage and moving costs. In submissions, Ms. Levesque asks for \$5,000 for wrongful eviction, \$1,451.25 for moving expenses, and \$5,000 for intentional infliction of mental suffering during the tenancy. She concludes by saying she seeks a total of \$5,000, which as noted is the CRT's small claims limit, so I find she waives any entitlement to amounts over \$5,000. In submissions, Ms. Levesque does not pursue claims for wage loss, opportunity loss or property damage, so I have not considered those issues.

Evidence issues

10. Ms. Levesque uploaded medical records that I could not open or review. She also indicated that she wished to provide additional evidence from her counsellor. I asked CRT staff to obtain the medical records from Ms. Levesque and give her the opportunity to provide the additional evidence. CRT staff obtained the medical records and advised me that Ms. Levesque confirmed that she had no additional evidence to submit. I reviewed the medical records.
11. Mr. Payne said he was also unable to view the medical records. Given the CRT's mandate that includes speed and efficiency, and because the medical records did not change the dispute's outcome, I decided it was not necessary to seek submissions from Mr. Payne on the medical records.

ISSUES

12. The issues in this dispute are:
 - a. Did Mr. Payne breach the parties' contract when he ended the tenancy?
 - b. Did Mr. Payne intentionally inflict mental suffering during the tenancy?
 - c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. Levesque must prove her 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.
14. On May 1, 2018, the parties signed a standard form "Residential Tenancy Agreement" provided by the RTB. The agreement said that after the agreement's fixed term expired on August 31, 2018, the tenancy continued on a month-to-month basis. The rent was \$600 per month. It appears the rent did not increase at any point. Although

not formalized in writing, Ms. Levesque says it was part of the parties' arrangement that she did some housecleaning, yard work and laundry for Mr. Payne and his family. Mr. Payne did not specifically dispute this.

15. On November 14, 2022, Mr. Payne gave Ms. Levesque an eviction notice, requiring her to move out by February 1, 2023. The reason in the notice was that Mr. Payne's daughter was going to occupy the rental unit. Ms. Levesque moved out on or before February 1, 2023. Ms. Levesque says she was able to find subsidized housing but had to pay a pet deposit and have her dog spayed and vaccinated first.

Did Mr. Payne breach the parties' contract when he ended the tenancy?

16. Ms. Levesque says she was wrongfully evicted. At the outset, I acknowledge Ms. Levesque's argument that Mr. Payne agreed to pay moving expenses in his Dispute Response. However, Mr. Payne indicated that he agreed with the requested resolution for moving expenses, which Ms. Levesque had quantified as \$0. I find it is clear from Mr. Payne's submissions that he does not agree to pay moving expenses or other possible damages arising from the eviction.
17. I find Ms. Levesque argues that the parties' tenancy agreement prohibited Mr. Payne from ending the tenancy except for the reasons set out in the RTA. One of those reasons is when the landlord's close family member "intends in good faith to occupy the rental unit." Ms. Levesque says Mr. Payne's daughter did not move back into Mr. Payne's home. She says this entitles her to \$5,000 in damages.
18. The RTB's standard tenancy agreement was perhaps an imperfect fit for the parties' situation. I say this because the agreement says its terms may not contradict or change any right or obligation under the RTA, but at the same time, the RTA says it does not apply to accommodation in which the tenant shares bathroom or kitchen facilities with the owner, which as noted was the case here. While the RTA imposes strict obligations on landlords, particularly around ending tenancies and evicting tenants, people sharing facilities in roommate-type situations normally have greater freedom to end their cohabitation.

19. Mr. Payne does not argue that the law of mistake applies and the contract was void or unenforceable. The essence of the agreement was the exchange of monthly rent for the rental unit, so I find that to the extent the parties mistakenly believed the RTA applied, that mistake did not go to the root of the contract. The goal of contract interpretation is to determine the parties' objective intentions at the time they made their agreement. Here, the text of the agreement is clear that the parties intended that Mr. Payne would be prohibited from ending the tenancy except for the reasons set out in the RTA, even though the RTA did not automatically apply to their situation. I note that previous CRT decisions have upheld terms in residential tenancy agreements even though the RTA did not apply to the parties' situation. For example, in *Williamson v. Katsnelson*, 2024 BCCRT 59, an owner was ordered to return double the damage deposit to a tenant. CRT decisions are not binding on me, but I agree with the reasoning in *Williamson*.
20. I find the parties' contract required Mr. Payne to comply with RTA's notice provisions in section 49. This meant Mr. Payne had to give 2 months' notice (which he undisputedly did) and needed certain justification for the eviction. The material provision is subsection 49(3), which allows a landlord to end a tenancy if the landlord or their close family member intends in good faith to occupy the rental unit. Mr. Payne says in late 2022, his daughter, AP, who was studying outside BC, confirmed that she wanted to return home at the end of the school year, which was apparently March 2023. He says she moved into the rental unit in March 2023 and lives there now.
21. Ms. Levesque says neighbours told her that Mr. Payne's daughter did not move back into the home but visits occasionally. This evidence is unattributed hearsay, and I give it no weight. That said, Mr. Payne bears the burden of proving that AP moved back into the home and that he complied with the parties' contract.
22. Mr. Payne provided 2 pieces of supporting evidence. The first is a BC Supreme Court summons for jury duty addressed to AP at Mr. Payne's home. There is no visible date on the notice, but the jury selection date was April 27, 2023, so I accept Mr. Payne's evidence that AP received the notice in March 2023.

23. Next, Mr. Payne provided a January 2024 photo of the bedroom in the rental unit, which shows what I accept are AP's clothes and possessions strewn about.
24. Ms. Levesque says AP already had a bedroom upstairs and could have lived there, or could have lived with her mother or somewhere else. She raises these allegations to argue that the eviction was not necessary. However, she only raised these allegations in her final reply, so Mr. Payne did not have a chance to respond to them and it would not be fair to consider them. I find the allegations unproven in any event.
25. Overall, while the evidence is not overwhelming, I find Mr. Payne has established on a balance of probabilities that AP moved into the rental unit in March 2023. This means Mr. Payne did not breach the parties' agreement, and therefore I dismiss Ms. Levesque's claim for damages for wrongful eviction and for moving expenses.
26. Had I instead concluded that Mr. Payne breached the rental agreement, I would not find Ms. Levesque entitled to the \$5,000 she claimed. I say this because the parties' agreement did not explicitly incorporate the compensation provisions set out in RTA section 51. So, Ms. Levesque would have to prove her actual damages. Those damages would be limited given Mr. Payne gave 2 months' notice and Ms. Levesque was able to find suitable alternative housing in that time.

Is Ms. Levesque entitled to damages for intentional infliction of mental suffering?

27. Ms. Levesque claims \$5,000 for intentional infliction of mental distress or mental suffering. She says Mr. Payne's conduct put her in a constant state of dread and gave her panic attacks. She says she suffered from anxiety and was prescribed anti-depressant, anti-anxiety medication.
28. As summarized in *R.T. v. Lowe*, 2021 BCSC 590, the elements of the tort of intentional infliction of mental suffering are conduct that:
- a. Is flagrant and outrageous,
 - b. Is calculated to produce harm, and

c. Results in a visible and provable illness.

29. Ms. Levesque's allegations about Mr. Payne's conduct generally fall into one of two categories. The first is her living conditions and the second is verbal abuse.
30. I considered all the evidence about Ms. Levesque's living conditions. This includes evidence about the absence of a handrail on her stairs, electrical hazards, poor lighting, flooding, inadequate heating, and frozen pipes. Mr. Payne does not specifically dispute most of the allegations about living conditions. However, I find the evidence of substandard living conditions indicates at most that Mr. Payne was a neglectful landlord. That is insufficient to establish an intention to cause harm. The tort of intentional infliction of mental distress is an intentional one and negligence does not establish liability (see *Kedia International Inc. v. Royal Bank of Canada*, 2008 BCSC 122, at paragraph 195).
31. Next, I consider verbal abuse. Ms. Levesque says Mr. Payne's abuse began the first week, when he yelled at her for helping herself to his popcorn. She says at various times during her tenancy, Mr. Payne yelled at her to "get out" or threatened to lock her out of the house. She says his behaviour caused her to have panic attacks. Mr. Payne's recollection is very different. He strongly denies being verbally abusive and says he always treated Ms. Levesque with respect and dignity.
32. Ms. Levesque says when appliances broke down, Mr. Payne would go into a rage and stomp around, causing her dishes to break. Ms. Levesque describes an incident in which she says Mr. Payne stomped up and down the hall above the rental unit saying "loser, loser, loser." She says this caused another panic attack that lasted hours. Following that, she says she went into a depression where only showered twice in a month to avoid Mr. Payne. Mr. Payne does not directly address this alleged incident, though he makes a blanket denial of all accusations.
33. Ms. Levesque describes another incident where her and Mr. Payne's dogs escaped the yard. She says she went running out to the street to catch them and Mr. Payne yelled across the street "you cunt, you dycke" (reproduced as written). She says when

she returned to remind Mr. Payne that he knew the gate was broken, he called her “a nothing, nothing but an Indian, a loser, a nobody, nobody cares about you, a jail bird, a criminal.” She says she had a panic attack that lasted several hours. She says she called the police, but they said it is not a crime to call someone names.

34. Mr. Payne admits that he was upset when Ms. Levesque let his dog out, but he says he dealt with the issue respectfully. In a May 26, 2022 text, Mr. Payne politely asked Ms. Levesque not to let his dog out. It is not clear if this text was about the yard escape incident referenced above or a different incident. Neither party says when the yard escape incident happened. However, Ms. Levesque’s counsellor’s June 24, 2022 entry describes the dog escape incident and includes the same names Mr. Payne allegedly called Ms. Levesque.
35. There is little objective evidence to support Ms. Levesque’s testimony. The notes from Ms. Levesque’s counsellor are simply a restatement of what Ms. Levesque told them, so in that sense they are not truly objective. However, they demonstrate that Ms. Levesque feared eviction and was bothered by name-calling during the tenancy – it is not something she made up after the eviction.
36. Mr. Payne submitted text messages. Those messages show Mr. Payne accepting late rent payments and agreeing to return rent money when Ms. Levesque was in need. They show Mr. Payne thanking Ms. Levesque for feeding the dog. Even when things broke down in November 2022, Mr. Payne confirmed that Ms. Levesque still had access to the kitchen and bathroom, he just did not want any interaction unless it was necessary. It may be that Mr. Payne has submitted only the messages that show him in a positive light. However, Ms. Levesque has not provided any text messages suggesting verbal abuse. She says this is because her phone was stolen but she does not say when this happened or whether she made any efforts to retrieve her text messages.
37. Significantly, the texts show that Ms. Levesque, in January and October 2022, thanked Mr. Payne for being “such a nice landlord,” and “an excellent landlord,” and offering to increase her rent payments when she found employment. Ms. Levesque

says these “happy texts” were genuine, but at the same time appeasing because she might one day need Mr. Payne as a reference for a new home.

38. While the limited evidence is roughly balanced, I put more weight on the text messages. Ultimately, I find it unlikely that Ms. Levesque would have sent texts praising Mr. Payne’s conduct as a landlord if she did not mean them. I find Ms. Levesque has not established that Mr. Payne’s conduct rose to the level of flagrant and outrageous. Nonetheless, I will consider the remaining parts of the test.
39. The next element Ms. Levesque must prove is conduct calculated to produce harm. The courts have interpreted this as having the intention to harm or the knowledge that harm would be substantially certain to follow – foreseeability is not enough (see *Piresferreira v. Ayotte*, 2010 ONCA 384, at paragraph 79). While I accept that Mr. Payne and Ms. Levesque argued at times and their living situation was uncomfortable by late 2022, the evidence before me is insufficient to establish that Mr. Payne intended to cause harm or knew it was substantially certain to follow even if he did call her reprehensible names.
40. The final part of the test for intentional infliction of mental suffering is a visible and provable illness. Establishing a visible and provable illness does not require expert medical evidence. However, the law distinguishes between psychological disturbance that rises to the level of personal injury and psychological upset that does not amount to injury and therefore is not compensable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 9, and *Lau v. Royal Bank of Canada*, 2017 BCCA 253, at paragraphs 47-50). Agitation, anxiety and other mental states that fall short of injury are generally not compensable. Further, the illness must be caused by the outrageous conduct.
41. Ms. Levesque submitted her medical records from December 2018 to March 2023. The records contain no mention of complaints about her living situation or Mr. Payne until November 2022. According to Dr. Bruce Wilson’s notes, the eviction process that began in November 2022 caused Ms. Levesque “situational anxiety.” Dr. Wilson noted that Ms. Levesque had lots of support in the community to help her find

alternate housing. Dr. Wilson prescribed anti-anxiety medication, noting that Ms. Levesque had taken it in the past. I find these notes insufficient to establish a visible and provable illness resulting from Mr. Payne's conduct.

42. In December, Dr. Wilson noted that the anxiety (related to the eviction) was causing Ms. Levesque to have nausea and abdominal pain. There is no evidence about how severe or prolonged these symptoms were. There is also nothing to distinguish between the stress and anxiety of being evicted through a valid eviction process and the possible stress and anxiety related to Mr. Payne's conduct. There is no evidence that he did anything during the eviction process to make things more difficult for Ms. Levesque.
43. The other difficulty for Ms. Levesque is that there is overwhelming evidence that she suffered from depression and anxiety before she came to be Mr. Payne's tenant. All of that evidence came from Ms. Levesque and it is not necessary to recount it here. I will note that on a government assessment form she completed, she said her depression and anxiety began in January 2010, and she had yearly panic attacks. She began taking anti-depressant and anti-anxiety medication then and has been on and off them since. Given this history, the evidence does not support a finding that Mr. Payne's alleged conduct is what caused Ms. Levesque's anxiety, depression, panic attacks, or any other symptoms.
44. For all these reasons, I dismiss Ms. Levesque's claim for intentional infliction of mental suffering.
45. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Payne was successful but did not pay CRT fees. I dismiss Ms. Levesque's claim for CRT fees. Ms. Levesque claims \$300 in dispute-related expenses for printing and photocopying. Because she was unsuccessful, because she did not provide receipts, and because the CRT is an online tribunal, I dismiss this claim.

ORDER

46. I dismiss Ms. Levesque's claims and this dispute.

Micah Carmody, Tribunal Member