Civil Resolution Tribunal

Date Issued: May 6, 2024

File: SC-2023-003813
and SC-2023-006090

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yovendi v. Francisco*, 2024 BCCRT 430

B E T W E E N :

ISOLDE YOVENDI

APPLICANT

A N D :

ANGELIZA FRANCISCO

RESPONDENT

A N D :

ISOLDE YOVENDI

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. These two linked disputes arise from a roommate situation. I find the disputes are a claim and counterclaim, so I have issued one decision.

2. Isolde Yovendi rented a room in a laneway home from Angeliza Francisco. Less than two months in, Miss Yovendi told Ms. Francisco that she was moving out at the end of the month. Ms. Francisco kept Miss Yovendi's $475 security deposit.

3. Miss Yovendi wants her $475 security deposit back. Ms. Francisco wants $3,627.57, which includes $950 for one month's rent, as well as unspecified amounts for wage loss, aggravated damages, and punitive damages.

4. Each party is self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

6. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. As I explain below, very little turns on credibility in this dispute. 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.

7. Section 42 of the CRTA 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

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 roommate disputes like this one. I find this dispute falls within the CRT's small claims jurisdiction for debt and damages under CRTA section 118. Neither party argues otherwise.

ISSUES

10. The issues in this dispute are:

    a. Was Miss Yovendi required to give notice before moving out? If so, how much?

    b. Is Miss Yovendi entitled to her security deposit back?

    c. Are any other remedies appropriate?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Miss Yovendi must prove her claims on a balance of probabilities, meaning more likely than not. Ms. Francisco must prove her counterclaims to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. Ms. Francisco lived in a laneway home with one bedroom downstairs and two bedrooms upstairs. Miss Yovendi found the listing for one of the upstairs bedrooms on Facebook and first talked to SV, who did not live in the home. On November 22, 2022, Ms. Francisco and SV showed Miss Yovendi the room. Miss Yovendi liked the room, so she paid Ms. Francisco a $475 security deposit.

13. The parties did not have a written agreement. Verbal agreements are enforceable, but they can be harder to prove. There is no dispute that the parties agreed on things like the rent, which was $950, and some rules like “no parties” and “no pets”.

14. Miss Yovendi paid $950 rent for December 2022 and January 2023. On January 12, 2023, Miss Yovendi’s mother messaged Ms. Francisco to advise that Miss Yovendi was moving out “by the start of February.” She said that she wanted Miss Yovendi to move in with a friend’s daughter. Ms. Francisco was surprised and responded that she needed at least two months’ notice, and then suggested that Miss Yovendi at least had to pay February’s rent. On January 13, Miss Yovendi confirmed by text that she was moving out on January 31, 2023. Ms. Francisco said she did not accept the short notice. None of this is disputed.

15. Miss Yovendi moved out on January 31, 2023. Ms. Francisco kept the security deposit. Ms. Francisco undisputedly rented Miss Yovendi’s room to someone else starting on March 1, 2023. So, Ms. Francisco claims February’s $950 lost rent, among other things. Miss Yovendi claims her security deposit back.

Notice

16. The parties disagree about whether Miss Yovendi was required to give notice before she moved out. Ms. Francisco says that when Miss Yovendi viewed the room on November 22, 2022, they agreed on a minimum of one month’s notice, although she preferred two months. In contrast, Miss Yovendi says they never discussed notice. She says she asked Ms. Francisco what she should do if she ever wanted to move out and Ms. Francisco replied, “Just let me know.”

17. Ms. Francisco supports her version of the November 22, 2022 conversation with a signed written statement from SV. I give little weight to SV’s evidence. SV is not a neutral witness given their involvement in the room rental and given Miss Yovendi’s unchallenged evidence that SV is or was Ms. Francisco’s romantic partner. Further, SV’s statement duplicates a portion of Ms. Francisco’s Dispute Response verbatim. That is, both say that the parties agreed on “30 days but better if 2 months notice”.

This suggests SV may not have been relying solely on their own recollection of the conversation when they prepared their statement. I find Ms. Francisco has not proven that the parties explicitly agreed on any notice period.

18. For clarity, to the extent that Miss Yovendi argues the parties agreed that she did not have to give any notice, I reject that suggestion. It is not supported by any independent evidence and is inconsistent with Ms. Francisco's reaction when informed that Miss Yovendi was moving out.

19. Instead, I find the parties did not discuss notice. In certain circumstances, contractual terms may be implied. Implied terms are terms that the parties did not expressly consider, discuss, or write down. Generally, the court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Such terms are based on the parties' presumed common intention. In other words, an implied term must be something that both parties would have considered obvious when they entered into the contract (see *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216).

20. Whether a notice period will be implied, and its length, depends on the circumstances of each case. Miss Yovendi points to three cases where a person moved out with less than one month's notice without breaching the contract. However, the facts in each of those cases differed in critical ways from the facts in this dispute.

21. In *de Lucovich v Cowart*, 2021 BCCRT 187, the CRT found 15 days' notice of an eviction was reasonable. However, the 15-day notice period was considered reasonable explicitly because of the circumstances of increasing tensions between occupants. There is no evidence of such tension here. I acknowledge that Miss Yovendi says she and her mother felt she would be safer if she stayed with someone her mother knew. However, there is no suggestion that Miss Yovendi was in any danger or even felt unsafe with her living situation with Ms. Francisco.

22. In *Lemniy v. Gon*g, 2021 BCCRT 451, the CRT found three weeks' notice was reasonable. This finding was based in part on the respondent's failure to say they expected more notice until weeks after being told the applicant was moving out. Here,

when told that Miss Yovendi was moving out, Ms. Francisco immediately asserted that she required at least one month's notice.

23. In *Tuyisenge v. Quansah*, 2020 BCCRT 1256, the CRT found that the parties realized they were not a good match as roommates and agreed on an early move-out. Therefore, there was no obligation to give notice. Here, there parties did not agree that Miss Yovendi could move out early.

24. So, none of these cases help Miss Yovendi establish that a 19-day notice period was reasonable here.

25. The CRT has often implied a reasonable notice period of one clear month in co-tenant or roommate agreements (see e.g., *Agyemang v. Paul*, 2023 BCCRT 352). One clear month means giving notice, for example, by end of January, to move out by the end of February. This serves the purpose of giving the other party time to find a new roommate or new living situation to begin at the start of the next month. Here, I find that one clear month's notice is reasonable and consistent with the parties' month-to-month arrangement. I find it appropriate to imply a term requiring either party to give one clear month's notice to end the agreement. It follows that Miss Yovendi breached the parties' agreement by failing to give one month's notice.

26. Text messages show that Ms. Francisco made reasonable efforts to rent Miss Yovendi's former room right away, but was unable to secure a new roommate until March. I find she is entitled to $950, representing one month's rent, as damages.

Security deposit

27. There is no real dispute that Miss Yovendi left her room and living space clean and tidy, and caused no damage. I find she is entitled to the full $475 security deposit.

Other claimed damages and conclusion

28. As noted, Ms. Francisco initially claimed unspecified amounts for wage loss plus aggravated and punitive damages. She did not provide any evidence or argument in support, so, I find she has not proved these claims.

29. Deducting the $475 security deposit from the $950 damages, the net result is that I order Miss Yovendi to pay Ms. Francisco $475.

30. The *Court Order Interest Act* applies to the CRT. Ms. Francisco is entitled to pre-judgment interest on the $475 from February 1, 2023, to the date of this decision. This equals $29.13.

31. 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. Ms. Francisco was more successful, so I order Miss Yovendi to reimburse Ms. Francisco's $125 paid CRT fees. I dismiss Miss Yovendi's claim for reimbursement of CRT fees. Neither party claims dispute-related expenses.

ORDERS

32. Within 21 days of the date of this order, I order Miss Yovendi to pay Ms. Francisco a total of $629.13, broken down as follows:

    a. $475 in damages,

    b. $29.13 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in CRT fees.

33. Ms. Francisco is entitled to post-judgment interest, as applicable.

34. I dismiss the remainder of Ms. Francisco's counterclaim.

35. This is a validated decision and order. Under section 58.1 of the CRTA, 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.

Micah Carmody, Tribunal Member