



# Civil Resolution Tribunal

Date Issued: May 6, 2024

Files: SC-2023-003117  
and SC-2023-010945

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rose v. Lamb*, 2024 BCCRT 431

B E T W E E N :

RAFAELA JACQUELINE ROSE

**APPLICANT**

A N D :

BETHANY LAMB

**RESPONDENT**

A N D :

RAFAELA JACQUELINE ROSE

**RESPONDENT BY COUNTERCLAIM**

---

## REASONS FOR DECISION

---

Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This is a dispute between former roommates. This decision involves two linked disputes which I find are a claim and counterclaim between the same parties. So, I have issued one decision for both disputes.
2. Rafaela Jacqueline Rose rented a room from Bethany Lamb<sup>1</sup> starting February 1, 2023, for a 6-month fixed term. In dispute SC-2023-003117, Ms. Rose says Bethany Lamb misled her to believe that they owned the apartment and hid that they lived with their boyfriend. Ms. Rose says Bethany Lamb and their boyfriend also made the living conditions unbearable, so she moved out early. Ms. Rose seeks a refund of \$3,300 for her paid 2 months' rent plus her \$825 damage deposit which Bethany Lamb has not returned.
3. In dispute SC-2023-010945, Bethany Lamb says Ms. Rose breached the parties' agreement by ending it early. As damages, they claim \$4,867.50 made up of \$1,650 for April's rent in full and \$3,217.50 for a portion of the remaining 3 months' rent.
4. Both parties are self-represented.

## JURISDICTION AND PROCEDURE

5. 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 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.
6. 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.

---

<sup>1</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. Bethany Lamb did not provide their pronouns or title. Because of this, I will use their full name and gender-neutral pronouns to refer to them throughout this decision, intending no disrespect.

To some extent, the parties in these linked disputes 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, I find I can fairly decide the key issues in dispute based on the documentary evidence and written submissions before me and that little turns on the parties' credibility. So, I find an oral hearing is not necessary.

7. 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.
8. Where permitted by CRTA section 118, in resolving these disputes 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.
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. So, I find the RTA does not apply and these linked disputes are within the CRT's small claims jurisdiction over debt and damages.

## ISSUES

10. The issues in these disputes are:
  - a. Did Bethany Lamb misrepresent the living situation or otherwise fundamentally breach the parties' agreement, entitling Ms. Rose to a \$3,300 rent refund?
  - b. Is Bethany Lamb entitled to damages for Ms. Rose terminating the parties' agreement early? If so, how much?
  - c. Must Bethany Lamb return Ms. Rose's \$825 damage deposit?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Rose must prove her claims on a balance of probabilities. Bethany Lamb must prove their counterclaim to the same standard. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Background***

12. In late January 2023, Ms. Rose responded to Bethany Lamb's Facebook Marketplace advertisement seeking to sublet a room in their 2-bedroom apartment. Bethany Lamb agreed to prepare an agreement for the parties to sign. In text messages, Bethany Lamb noted that Ms. Rose had mentioned doing "3 or 6 months, and even month to month" and asked Ms. Rose what she preferred for the agreement. Ms. Rose responded that 6 months was good. Bethany Lamb then prepared a standard form RTB residential tenancy agreement which the parties each signed on January 23, 2023.
13. While the RTA does not apply here, to the extent the parties incorporated RTA terms into their agreement by using the RTB form, those are contractual terms that bind the parties. Under the agreement, Ms. Rose had to pay Bethany Lamb \$1,650 monthly rent and a \$825 security deposit. In the signed agreement, Bethany Lamb inserted the 6-month term in the section that says that the tenancy would continue on a periodic basis, which they noted was "monthly for 6 months and then month to month". They also clicked option "D" underneath noting that the fixed-term tenancy would continue on a month-to-month basis after the term expired. While this part of the agreement is somewhat confusing, I find it is clear from the parties' text messages prior to signing the agreement and their written submissions that they undisputedly agreed on a 6-month fixed term. So, I find that Bethany Lamb noted the 6-month term in the periodic tenancy section instead of the fixed-term tenancy section in the agreement in error.

14. The tenancy began on February 1, 2023, however, text messages in evidence show that Bethany Lamb agreed to allow Ms. Rose to move in on January 29. The parties agree that at least once in early March, Ms. Rose complained to Bethany Lamb about noise they or their boyfriend made in the kitchen early in the morning. The kitchen shared a wall with Ms. Rose's bedroom and Ms. Rose says the noise was unreasonably loud. On March 13, Ms. Rose texted Bethany Lamb saying that due to the kitchen noise in the mornings, she did not think that the living situation was going to work out for her. Ms. Rose asked Bethany Lamb if they required her to give a written notice by month-end. Bethany Lamb responded that they had a busy morning and said they could figure it out later.
15. The next day, Bethany Lamb apologized for not speaking to Ms. Rose over the last few days. They said that they thought things were going really well and were surprised to receive Ms. Rose's previous text message. Bethany Lamb said that they really liked having Ms. Rose around and asked if there was anything they could do to work things out but said they would respect it if Ms. Rose's final decision was to leave. By this point, Bethany Lamb had undisputedly re-posted Ms. Rose's bedroom for rent online with a start date of April 1. Ms. Rose found the posting on Facebook Marketplace and informed Bethany Lamb of this in a March 15 text message. In the same message, Ms. Rose said that she would be moving out "this weekend". On March 16, Ms. Rose informed Bethany Lamb that she would move out by March 18 and would leave the keys on the counter. She asked when she could expect her damage deposit back. Bethany Lamb responded the next day that the damage deposit is always done after the keys are returned.
16. Ms. Rose moved out on March 18 but has not received her damage deposit back from Bethany Lamb.

### ***The parties' claims***

17. I will first address Ms. Rose's \$3,300 refund claim for the 2 months' rent she paid. Ms. Rose argues that Bethany Lamb made 2 misrepresentations when they listed the apartment for rent. First, she argues that they misrepresented that they owned the

apartment. Second, Ms. Rose argues Bethany Lamb hid that their boyfriend lived with them. In addition to the alleged misrepresentations, Ms. Rose says Bethany Lamb and their boyfriend also made the living situation unbearable by banging pots and pans and slamming drawers and cupboards in the kitchen every morning at 5 AM. She says that she also hardly ever had access to the common living room and kitchen because Bethany Lamb and their boyfriend were often there.

18. While she does not use this language, I find Ms. Rose alleges that by doing the above, Bethany Lamb fundamentally breached the parties' contract, and so she is entitled to be put in the position she was in before the contract was made.
19. A fundamental breach occurs when a party fails to fulfill a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC)). Put another way, a fundamental breach is a breach that destroys the whole purpose of the contract and makes further performance impossible (see *Bhullar v. Dhanani*, 2008 BCSC 1202).
20. I turn first to the alleged misrepresentations, starting with the allegation that Bethany Lamb misled Ms. Rose to believe that they owned the apartment. Ms. Rose provided a partial screenshot of Bethany Lamb's Facebook Marketplace advertisement that she said she responded to. In the advertisement, Bethany Lamb called the apartment "my condo". Ms. Rose says she understood this meant that Bethany Lamb owned the apartment, which she learned shortly after moving in was not the case. Bethany Lamb says that they did not intend to imply that they owned the apartment, which they thought was obvious given their age and that they told Ms. Rose that they had lived there for 7 years. Notably, the advertisement Ms. Rose relies on also said that Bethany Lamb was looking to sublet for 6 months. I find using the word sublet was a clear indication that Bethany Lamb did not own the apartment. So, I find this misrepresentation unproven. Ms. Rose also suggests that Bethany Lamb purposely used the RTB standard form contract, listing themselves as the landlord to continue the ruse that they owned the apartment, which Bethany Lamb denies. I find this allegation

purely speculative and accept Bethany Lamb's explanation that they thought the RTB form was the correct form at the time. In any event, even if Bethany Lamb misled Ms. Rose to believe that they owned the apartment, I am not satisfied that this misrepresentation deprived Ms. Rose from the benefit she contracted for, a room in the apartment. So, there would be no fundamental breach in any event.

21. Next, Ms. Rose says Bethany Lamb hid the fact that their boyfriend lived with them. Ms. Rose refers to the Facebook Marketplace advertisement she provided in evidence, where she notes Bethany Lamb said that their boyfriend usually stays over on the weekends, and that they are out and about quite a bit. Ms. Rose says that Bethany Lamb's boyfriend was there almost every evening, not just on the weekends, and lived at the apartment. She says that she never agreed to live with a couple or a male and having Bethany Lamb's boyfriend constantly at the apartment made her uncomfortable.
22. Bethany Lamb denies that their boyfriend lives at the apartment. They say that the advertisement they posted on Facebook Marketplace actually said that their boyfriend usually stays over a few times a week. They say that they can no longer access the original advertisement but that another Craigslist advertisement they provided in evidence was copied from the Facebook Marketplace advertisement. Bethany Lamb says that the advertisement Ms. Rose relies on was a different advertisement they posted at the same time for a short-term rental on the weekends, which is why they mentioned their boyfriend visits on the weekends. On balance, given that the advertisement Ms. Rose relies on referred to a 6-month sublet, I do not accept Bethany Lamb's explanation. I find it more likely than not that this is the advertisement Ms. Rose responded to. However, as set out further below, I find nothing turns on this in any event.
23. Bethany Lamb's evidence includes bank documents that list a different address for their boyfriend than the apartment. They also provided text messages they exchanged with their boyfriend during the time Ms. Rose lived in the apartment, which

I find show that their boyfriend did not live there. So, I find Bethany Lamb did not misrepresent that they lived in the apartment alone.

24. Further, to the extent Ms. Rose argues that Bethany Lamb misrepresented how often their boyfriend would visit, I also find Ms. Rose is not entitled to a rent refund on this basis. While I accept that Bethany Lamb's Facebook Marketplace advertisement said that their boyfriend usually stays over on the weekends, I am not satisfied that their boyfriend staying more frequently than that was substantially different from what was agreed upon to warrant a rent refund. Ms. Rose agreed to rent the bedroom knowing that Bethany Lamb's boyfriend would be a frequent visitor, at least on weekends. Further, unlike the complaints about the kitchen noise, there is no documentary evidence that shows Ms. Rose ever complained to Bethany Lamb about the frequency of their boyfriend's visits, and I accept Bethany Lamb's evidence that there were no such complaints. So, while I acknowledge that Bethany Lamb's boyfriend was likely at the apartment more often than advertised, I do not find this was a fundamental breach.
25. The evidence also does not show that Ms. Rose ever complained to Bethany Lamb about not being able to use the common areas due to their boyfriend being around too often, or that Bethany Lamb and their boyfriend actually prevented Ms. Rose from using the common areas. So, I find these allegations unproven.
26. Finally, while I accept Ms. Rose found the kitchen noise unreasonable, she provided no objective evidence showing how loud the noise was. There is also no documentary evidence, such as contemporaneous notes, about how often the noise occurred or for how long. I find some amount of noise is to be expected in a shared living situation, and when a bedroom and kitchen share a wall, that noise may be more noticeable. The noise would need to be considerable to amount to a fundamental breach, and I find it unproven here that it was.
27. Ms. Rose also appears to argue that she is entitled to some sort of rent refund because Bethany Lamb changed the locks after she moved out on March 18, which she says was in breach of the parties' agreement. I find Ms. Rose is also not entitled



to any rent refund on this basis. This is because I find it was Ms. Rose who fundamentally breached the parties' agreement by moving out early. There is also no suggestion that the parties agreed that Ms. Rose would continue to have access after March 18. So, I find Bethany Lamb was entitled to change the locks once Ms. Rose moved out. For the above reasons, I dismiss Ms. Rose's claim for a rent refund.

28. I turn now to Bethany Lamb's claim that they are entitled to damages due to Ms. Rose ending the fixed-term tenancy early. First, I note that both parties refer to the one month notice period set out in section 14 of the standard form RTB agreement they signed. However, this notice period only applies to monthly, weekly, or other periodic tenancies. As noted above, the parties specifically agreed to a fixed rather than a periodic tenancy.
29. I find the parties' agreement did not permit Ms. Rose to terminate it unilaterally and the parties did not mutually agree to an early termination. So, I find Ms. Rose must pay Bethany Lamb damages for ending the tenancy prematurely. The question then is what are Bethany Lamb's damages? As noted above, Bethany Lamb claims \$1,650 for April's rent and 65% rent (\$1,072.50 a month) for the 3 months that remained in the fixed term, together totaling \$4,867.50. Bethany Lamb says that because Ms. Rose moved out early, they had to pay April's full rent to their landlord themselves. Bethany Lamb says the 65% rent for the remaining 3 months is equivalent to the difference in their monthly living expenses after they moved from the 2-bedroom apartment to a studio apartment.
30. Notably, Bethany Lamb did not provide any additional details or supporting documents in support of their damages claim after they moved from the 2-bedroom apartment. So, there is no evidence showing how much their previous landlord charged them for the 2-bedroom apartment, when exactly they moved to the studio apartment, or how much rent they paid for those 3 months at the studio apartment. While I accept that Bethany Lamb was not able to find a suitable roommate for April and likely moved from the 2-bedroom apartment shortly thereafter, without any supporting evidence, I find it unproven that Ms. Rose's early termination resulted in

continuing losses for Bethany Lamb after April. So, I find Bethany Lamb's proven damages are limited to \$1,650 for Ms. Rose's share of April's rent.

31. This leaves Ms. Rose's claim for her \$825 damage deposit. Bethany Lamb does not argue that Ms. Rose caused any damage to the apartment during her tenancy. Rather they say that they kept the deposit since Ms. Rose breached the agreement by moving out early. There is no suggestion that Ms. Rose agreed to allow Bethany Lamb to keep the damage deposit, as the parties' contract noted they could agree. So, I find Bethany Lamb should not have kept the deposit and Ms. Rose is entitled to the \$825 deposit's return.
32. After deducting the \$825 deposit amount from the \$1,650 in damages I have awarded Bethany Lamb, I order Ms. Rose to pay Bethany Lamb \$825.
33. The *Court Order Interest Act* (COIA) applies to the CRT. Bethany Lamb is entitled to pre-judgment interest on the \$825 from April 1, 2023, the date April's rent was due, to the date of this decision. This equals \$44.67.
34. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find the parties' success here was mixed. So, I find it appropriate for the parties to bear the cost of their own CRT fees and any dispute-related expenses.

## **ORDERS**

35. Within 14 days of the date of this decision, I order Ms. Rose to pay Bethany Lamb \$825 in damages and \$44.67 in pre-judgment interest under the COIA, together totaling \$869.67.
36. Bethany Lamb is entitled to post-judgment interest, as applicable.
37. I dismiss the parties' remaining claims.

38. 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.

---

Nav Shukla, Tribunal Member