



Civil Resolution Tribunal

Date Issued: May 23, 2024

Files: SC-2023-002250
and SC-2023-010252

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Liu v. Zhang*, 2024 BCCRT 473

BETWEEN:

MIN LIU

APPLICANT

AND:

JUNWEI ZHANG

RESPONDENT

AND:

MIN LIU

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This decision is about two linked disputes between former roommates which I find are a claim and counterclaim between the same parties. So, I have issued one decision for both disputes.
2. Junwei Zhang rented a room from Min Liu¹ from May 1, 2022 to March 31, 2023. In dispute SC-2023-002250, Min Liu says Mr. Zhang refused to pay the final month's rent, despite still living at the apartment. Min Liu claims \$1,000 for March's unpaid rent.
3. In dispute SC-2023-010252, Mr. Zhang says Min Liu has not returned his \$500 security deposit and \$100 key deposit, in breach of the parties' agreement. Mr. Zhang claims \$1,200 for double the amount of his unreturned deposits.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.

¹ 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. Min Liu asked that their full name be used and indicated their pronouns are "they/them/their". Junwei Zhang advised his title is Mr. and pronouns are "he/him/his". So, I have referred to the parties accordingly in this decision.

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.

Preliminary issues

9. First, 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 these. So, I find the RTA does not apply and these linked disputes are within the CRT's small claims jurisdiction over debt and damages.
10. Next, in their written submissions, Min Liu appears to claim an additional \$37.90 for unpaid utilities that they did not claim in their Dispute Notice. Min Liu says that they did not initially include this claim because the BC Hydro bill arrived after they started dispute SC-2023-002250. The purpose of a Dispute Notice is to define the issues and provide notice to a respondent of the claims against them. The CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims and remedies. Min Liu did not do so here. CRT rule 1.19 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here to justify adding a new remedy at this late stage in the CRT process. So, I decline to address Min Liu's \$37.90 claim for unpaid utilities.
11. Finally, both parties submitted some evidence that was not in English, with no translations provided. CRT rule 1.7(5) says all information and evidence must be in English or translated to English. So, in making my decision I have relied only on the evidence that is in English.

ISSUES

12. The issues in these disputes are:
 - a. Does Mr. Zhang owe Min Liu \$1,000 for March's rent?
 - b. Must Min Liu pay Mr. Zhang \$1,200 for double his security and key deposit?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Min Liu must prove their claims on a balance of probabilities. Mr. Zhang must prove his 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.
14. On March 8, 2022, the parties entered into a written tenancy agreement. The parties' signed contract is a standard form RTB residential tenancy agreement. 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.
15. The evidence shows Mr. Zhang agreed to rent a bedroom with a private bathroom from Min Liu in the apartment Min Liu rented from their landlord, TL. The parties agreed to an initial 6-month term from May 1, 2022 to October 31, 2022. After October 31, Mr. Zhang's tenancy continued on a month-to-month basis. Mr. Zhang's rent was \$1,000 a month and he also paid Min Liu a \$500 security deposit and a \$100 key deposit.
16. On February 12, 2023, TL gave Min Liu notice that that TL would need the apartment back on June 1, 2023 and agreed to waive Min Liu's rent payment for May 2023.
17. Following this, on February 22, Mr. Zhang emailed Min Liu and said that he would be ending his tenancy on March 31 due to TL's request to take the property back on June 1. Mr. Zhang told Min Liu that he would not be paying rent for March, on the same basis that Min Liu would not be paying TL rent for May. Min Liu disagreed and demanded Mr. Zhang pay March's rent, but he refused to do so.

18. Mr. Zhang moved out on March 31, 2023. By email on April 17, Mr. Zhang sent Min Liu their forwarding address so that Min Liu could return his \$500 security deposit and \$100 key deposit. Min Liu has undisputedly kept both deposits. In response to Mr. Zhang's claims in dispute SC-2023-010252, Min Liu says that they are entitled to keep at least some of the deposits due to alleged damage Mr. Zhang caused at the apartment, and his alleged failure to properly clean the apartment before vacating.

March's rent

19. I turn first to Min Liu's claim against Mr. Zhang. Min Liu says that Mr. Zhang breached the parties' agreement by failing to pay rent for March. The parties' agreement allowed Mr. Zhang to give one month's written notice to end the tenancy, which he did. However, under the agreement, Mr. Zhang was still required to pay rent until the tenancy's end. Mr. Zhang appears to argue that under the RTA, he was entitled to stay at the apartment through the end of March without paying rent. I infer Mr. Zhang argues that RTA section 51(1) applies. This section requires a landlord who gives notice to end a tenancy under RTA section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end a tenancy for a landlord's use is entitled to receive the equivalent of one month's rent.

20. The parties' agreement says that Min Liu may end the tenancy only for the reasons and in the manner set out in the RTA. However, I find the evidence clearly shows it was Mr. Zhang who gave notice to end his tenancy with Min Liu, not the other way around. While TL had given Min Liu notice to end Min Liu's tenancy, the evidence does not show that Min Liu had yet given any notice to Mr. Zhang to end his tenancy when Mr. Zhang gave his notice on February 22.

21. Further, to the extent that Mr. Zhang argues that he was also a party to the tenancy agreement between Min Liu and TL, entitling him to part of the compensation Min Liu received, I disagree. I am satisfied on the evidence before me that only Min Liu was party to the tenancy agreement with TL. So, I find Mr. Zhang was not entitled to any compensation from Min Liu for March's rent. Accordingly, I find Mr. Zhang owes Min Liu \$1,000 for unpaid rent.

Deposits

22. I turn now to Mr. Zhang's counterclaim for his unreturned \$500 security deposit and the \$100 key deposit, starting with the key deposit. Min Liu does not dispute that Mr. Zhang returned the apartment keys at the end of his tenancy. There is nothing in the parties' agreement that suggests that Min Liu could keep the key deposit once Mr. Zhang returned the keys. So, I find Mr. Zhang is entitled to the \$100 key deposit's return.
23. Next, section 4(1) of the parties' agreement said that Min Liu would repay the security deposit unless 2 conditions were met. First, Mr. Zhang could agree in writing to allow Min Liu to keep the deposit as payment for unpaid rent or damage. This did not happen. Second, Min Liu could apply for dispute resolution under the RTA claiming some or all of the security deposit within 15 days from the later of the tenancy's end or when Mr. Zhang provided a forwarding address. The CRT has held that a landlord can comply with this term by applying for dispute resolution at the CRT instead, given the RTB declines jurisdiction over these types of disputes (see *Williamson v. Katsnelson*, 2024 BCCRT 59 and *Sood v. Williams*, 2019 BCCRT 1035). Prior CRT decisions are not binding on me, but I agree with the reasoning in these decisions. As noted above, Mr. Zhang gave Min Liu his forwarding address by email on April 17. So, I find Min Liu had until May 2, 2023 to apply for dispute resolution to the CRT claiming some or all of the security deposit.
24. Here, Min Liu applied to the CRT for dispute resolution in dispute SC-2023-002250 on March 2, 2023, 29 days *before* Mr. Zhang's tenancy ended. In their Dispute Notice, Min Liu's only claimed remedy is \$1,000 for March's rent. Notably, Min Liu did not say in their Dispute Notice that they are claiming against the security deposit for the unpaid rent or for alleged damage to the apartment by Mr. Zhang. This is not surprising since Mr. Zhang was still living at the apartment on March 2, and Min Liu would not yet have known whether they would have a claim against the security deposit for damage.

25. Min Liu says that they tried to apply to the RTB to keep Mr. Zhang's deposit, but their request was rejected because the RTA does not apply to roommate disputes. However, Min Liu does not say, nor does the evidence show, when they attempted to make this application. Further, after Mr. Zhang moved out, Min Liu could have amended their Dispute Notice in CRT dispute SC-2023-002250 within the 15-day deadline to include a claim against the security deposit for Mr. Zhang's alleged failure to properly clean the space before leaving and for causing damage. They did not do so. Further, even if Min Liu's right to keep a portion of the security deposit was raised by Mr. Zhang in his application for dispute resolution in dispute SC-2023-010252, this is still untimely because his application was filed on May 20, 2023, 18 days after the May 2 deadline expired.
26. Section 4(3) of the agreement says that if Min Liu did not comply with section 4(1), they may not make a claim against the security deposit and must pay Mr. Zhang double the amount of the deposit. I find Min Liu did not apply for dispute resolution to claim against some or all of the security deposit and failed to comply with section 4(1). So, I find they must pay Mr. Zhang double the security deposit's amount. I find the double deposit provision in the parties' agreement does not apply to the key deposit. So, in total, I find Min Liu owes Mr. Zhang \$1,100 for the \$100 key deposit and double the \$500 security deposit.
27. It follows that I do not need to consider whether Min Liu has established any rental unit damage or cleaning expenses because the parties' agreement does not allow Min Liu to keep any part of the security deposit when section 4(1) has not been complied with (see *Chang v. Jiazheng*, 2021 BCCRT 1032 at paragraph 23).
28. Had the agreement not prohibited Min Liu from keeping part of the security deposit, I would likely not have allowed any set-off anyway. I find the damage shown in the photos and video evidence is minor and mostly scuffs and scratches. The damage is consistent with reasonable wear and tear, which the agreement said Mr. Zhang was not responsible for. Further, while photos show a somewhat dirty bathroom sink,

mirror and bathtub, Min Liu provided no cleaning receipts or evidence of time spent cleaning.

29. In conclusion, I find Min Liu is entitled to \$1,000 for March's unpaid rent and Mr. Zhang is entitled to \$1,100 in damages for the unreturned deposits. After deducting Min Liu's \$1,000 award from Mr. Zhang's \$1,100 award, I order Min Liu to pay Mr. Zhang \$100 in damages.
30. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Zhang is entitled to pre-judgment interest on the \$100 in damages from May 2, 2023, the date by which Min Liu was required to return the security deposit under the parties' agreement, to the date of this decision. This equals \$5.28.
31. 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. Here, both parties were substantially successful in their respective disputes. Under the circumstances, I find it appropriate for each party to bear the cost of their own CRT fees and dispute-related expenses.

ORDERS

32. Within 14 days of the date of this decision, I order Min Liu to pay Mr. Zhang a total of \$105.28, broken down as follows:
 - a. \$100 in damages, and
 - b. \$5.28 in pre-judgment interest under the COIA.
33. Mr. Zhang is entitled to post-judgment interest, as applicable.
34. The parties' remaining claims are dismissed.
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.

Nav Shukla, Tribunal Member