



Civil Resolution Tribunal

Date Issued: May 30, 2024

File: SC-2023-004554

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. Chen*, 2024 BCCRT 495

BETWEEN:

XIN ZHANG

APPLICANT

AND:

WEIYU CHEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about shared accommodations in a condo.
2. The applicant, Xin Zhang, rented a bedroom and shared a kitchen with the respondent owner, Weiyu Chen. After just 10 days, Ms. Zhang moved out. She claims

\$800 as a rent refund and \$1,200 for double her \$600 security deposit based on a term in the parties' written agreement. Ms. Zhang also claims \$727 in moving expenses and \$80 for a parking pass. In total, she seeks \$2,807.

3. Mrs. Chen says Ms. Zhang failed to give one month's notice before moving out and is not entitled to a rent refund. She says Ms. Zhang's claims must be set off against Mrs. Chen's alleged entitlement to \$1,200 in rent, \$80 in cleaning labour costs, and \$500 in other costs.
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). 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.
6. Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
7. 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. 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.

8. 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.
9. 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.
10. Mrs. Chen submitted late evidence about listing the room for rent after Ms. Zhang moved out. This evidence is relevant to Mrs. Chen's damages if Ms. Zhang breached the agreement. Because I found that the parties mutually agreed to end the tenancy and no damages are payable, I did not need to consider this late evidence. So, while I have admitted the evidence, it did not affect the outcome and I did not seek submissions from Ms. Zhang about it.

ISSUES

11. The issues in this dispute are:
 - a. Did either party breach the rental agreement, and what remedies, if any, are appropriate?
 - b. Is Ms. Zhang entitled to moving expenses under section 146 of the *Strata Property Act* (SPA)?
 - c. Is Ms. Zhang entitled to repayment of her security deposit or double its value?
 - d. Is Ms. Zhang Parking entitled to repayment of \$80 she paid for a parking pass?

EVIDENCE AND ANALYSIS

12. As the applicant in this civil proceeding, Ms. Zhang 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.

13. On October 15, 2022, Ms. Zhang paid Mrs. Chen a \$600 security deposit. On November 15, 2022, Ms. Zhang moved in and the parties signed a standard-form residential tenancy agreement. The same day, Ms. Zhang's car struck the strata building's parkade door. The Insurance Corporation of British Columbia (ICBC) eventually reimbursed the strata for the repair costs, as noted in *Zhang v. The Owners, Strata Plan BCS 282*, 2024 BCCRT 350. I return to this below.
14. The agreement was for a fixed term of 6 months. The rent was \$1,200 per month, due on the 15th of each month. On November 15 and 16, 2022, Ms. Zhang paid Mrs. Chen \$1,200 in rent and \$80 for a parking pass. Ms. Zhang also paid an \$80 deposit for a key and fob, which Mrs. Chen undisputedly returned.

Ending the agreement

15. It is undisputed that on November 24, 2022, Ms. Zhang told Mrs. Chen by phone that she was moving out the next day. Ms. Zhang moved out on November 25, 2022.
16. Ms. Zhang says she was justified in ending the agreement with only one day's notice for various reasons. She says that Mrs. Chen misrepresented the direction the room faced, failed to immediately repair one of the two showers that was leaking, breached municipal bylaws, entered her room without permission, invaded her privacy, interfered with her reasonable enjoyment of the common areas, and injured her by forcefully taking back the key when she moved out. I find that none of these arguments are persuasive. The evidence at most establishes minor breaches of the agreement.
17. Ms. Zhang alternatively argues that the parties mutually agreed to end the tenancy early. Mrs. Chen denies this. However, I agree that this is what happened. The evidence indicates that Ms. Zhang was uncomfortable living with Mrs. Chen, who had strict rules and peculiar habits. The two were incompatible as roommates. I find that Mrs. Chen acknowledged this in text messages to Ms. Zhang sending her other room

rental listings, and stating she was willing to continue to try to welcome Ms. Zhang as long as she was also willing.

18. This finding is also supported by the unchallenged written statement of Ms. Zhang's friend, JG. JG said that on November 24, 2022, the parties asked JG to mediate. JG said Mrs. Chen agreed that Ms. Zhang could move out the next day, but did not agree to return any rent or the security deposit.
19. Given the evidence, I find the parties mutually agreed to end the agreement effective November 24. This means that Ms. Zhang is not entitled to any reimbursement of pro-rated rent, but neither is Mrs. Chen entitled to damages for the early termination.

Is Ms. Zhang entitled to moving expenses under SPA section 146?

20. Section 146(1) of the SPA says that before a landlord rents all or part of a residential strata lot, they must give the prospective tenant the current bylaws and rules, and a Notice of Tenant's Responsibilities (Form K). Section 146(2) says the landlord must also give the strata corporation a copy of the signed Form K. It is undisputed that Mrs. Chen failed to do these things.
21. Section 146(3) says that if the landlord fails to do any of those things, the tenant may end the tenancy agreement without penalty by giving notice to the landlord within 90 days of learning of the landlord's failure to comply. Section 146(4) says that if a tenant ends a tenancy agreement under subsection (3), the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent.
22. I find that SPA section 146(4) does not apply to circumstances like these, where the tenancy ended by mutual agreement rather than Ms. Zhang ending the tenancy. Even if I accepted that Ms. Zhang ended the tenancy, she does not say that she did so because she failed to receive the Form K or the bylaws. So, I find Ms. Zhang is not entitled to moving expenses under SPA section 164(4). I dismiss Ms. Zhang's claim for moving expenses.

Is Ms. Zhang entitled to repayment of her security deposit or double its value?

23. Although I found above that the parties agreed to end the tenancy early, I find they did not come to any new agreement about the damage deposit, so the written agreement applies.
24. Section 4(1) of the agreement said that Mrs. Chen would repay the security deposit within 15 days of the tenancy's end unless one of two conditions were met. First, Ms. Zhang could agree in writing to allow Mrs. Chen to keep the deposit as payment for unpaid rent or damage. This did not happen. Second, Mrs. Chen could keep the deposit if she applied for dispute resolution under the RTA within 15 days of the tenancy's end or when Ms. Zhang provided a forwarding address. This also did not happen. Although Ms. Zhang did not provide a forwarding address until April 21, 2023, Mrs. Chen still never repaid the deposit. The CRT has held that a roommate-type landlord can comply with this term by applying for dispute resolution at the CRT instead, given that the RTB declines jurisdiction over these types of disputes (see e.g., *Williamson v. Katsnelson*, 2024 BCCRT 59). However, that does not assist Mrs. Chen here because she did not apply to the CRT.
25. Section 4(3) of the agreement said that if Mrs. Chen does not comply with section 4(1), she may not make a claim against the deposit and must pay Ms. Zhang double the amount of the deposit. Given that Mrs. Chen did not meet the conditions to keep the deposit, I find Ms. Zhang is entitled to double her \$600 security deposit, or \$1,200 in damages.

Parking charge

26. Mrs. Chen charged Ms. Zhang \$80, which she says was a fee the strata corporation imposed to supply a parking pass. Ms. Zhang points out that the written agreement said parking for one vehicle was included. In submissions, Mrs. Chen agrees to repay the \$80, so I find it is appropriate to order Mrs. Chen to repay Ms. Zhang the \$80.
27. In total, Ms. Zhang is entitled to \$1,280, subject to any allowable setoff.

Claim for setoff for time spent and stress

28. Mrs. Chen did not file a counterclaim, but she argues that certain alleged debts or damages should be deducted from any amounts awarded to Ms. Zhang. This is known as a setoff (see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34).
29. I found above that Mrs. Chen is not entitled to damages for the tenancy's early end. I also find that she cannot claim for room cleaning costs as she failed to comply with section 4(1) of the parties' agreement.
30. Mrs. Chen says she is entitled to \$500 for her time spent addressing the strata parkade gate Ms. Zhang damaged, and related stress. As noted, ICBC ultimately reimbursed the strata for the repair costs. While I accept that Mrs. Chen spent some time addressing this issue with the strata and with Ms. Zhang, Mrs. Chen does not point to anything in the rental agreement or any general legal principle that would allow her to recover compensation for such time spent as damages. I find she is not entitled to any setoff for time spent.
31. As for stress, while I accept that the gate damage and the tenancy as a whole was upsetting for Mrs. Chen, the law distinguishes between disturbances that rise to the level of personal injury and those that do not amount to injury and therefore are 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). Here, the evidence falls short of establishing either an injury or any causal link to the tenancy. I find Mrs. Chen is not entitled to any setoff for stress.
32. The *Court Order Interest Act* applies to the CRT. Ms. Zhang is entitled to pre-judgment interest on the \$1,280 from May 6, 2023, the last date Mrs. Chen had to return the damage deposit, to the date of this decision. This equals \$68.22.
33. 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. Zhang was partially successful, so I find she is entitled to reimbursement of \$62.50 for half her \$125 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

34. Within 21 days of the date of this order, I order Mrs. Chen to pay Ms. Zhang a total of \$1,410.72, broken down as follows:
- a. \$1,280 in debt,
 - b. \$68.22 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
35. Ms. Zhang is entitled to post-judgment interest, as applicable.
36. 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