



Civil Resolution Tribunal

Date Issued: June 18, 2024

File: SC-2023-006385

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sim v. Bryan*, 2024 BCCRT 569

BETWEEN:

KUI LENG EMILY SIM

APPLICANT

AND:

ALISHA JERALEE BRYAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. Kui Leng Emily Sim rented a room in Alisha Jeralee Bryan's home. When Ms. Sim moved out, she says Ms. Bryan refused to refund her \$475 damage deposit. She claims that amount.
2. Ms. Bryan says she properly withheld Ms. Sim's damage deposit because Ms. Sim damaged the floor in her bedroom. She denies owing Ms. Sim any refund.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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” shared a kitchen or bathroom with an owner, which was the case here. So, I find this dispute falls within the CRT’s small claims jurisdiction over debt and damages, as set out in CRTA section 118.
5. Section 39 of the CRTA says that 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. Further, 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.
6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
7. Where permitted by section 118 of the CRTA, in resolving this dispute, 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.

ISSUE

8. The issue in this dispute is whether Ms. Bryan must refund Ms. Sim’s \$475 damage deposit.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Sim must prove her claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. The parties started living together on July 1, 2022, and Ms. Sim moved out on June 16, 2023. They initially signed a 6-month rental agreement from July 1, 2022 to December 31, 2022, and then signed another covering the period January 1, 2023 to June 30, 2023. Ms. Sim undisputedly paid Ms. Bryan a \$475 damage deposit.
11. The parties’ contracts both say that the damage deposit would be refunded “should no damage be done”.
12. Ms. Bryan says she kept the damage deposit solely because of floor damage in Ms. Sim’s bedroom. So, I have not considered the parties’ other arguments about the living room flooring or the cleanliness of Ms. Sim’s bedroom or bathroom.
13. Ms. Bryan provided photos that show approximately 6 bubbles of apparent water damage to the laminate floor in Ms. Sim’s room. While Ms. Sim acknowledges the bubbles shown in the photos, she argues they are minor as they are only observable in close-up photos, and alleges they could have happened before she moved in.
14. Ms. Bryan provided a statement from the room’s former tenant, MM. In the statement MM says they moved out on June 28, 2022, did a final inspection with Ms. Bryan when they moved out, and there were no bubbles or other water damage in the room. So, I find Ms. Sim’s argument that the bubbles existed before she moved in speculative. On balance, I find the bubbles occurred while Ms. Sim occupied the room.
15. Ms. Sim also argues the bubbles are likely normal wear and tear. However, the parties’ contract does not exclude wear and tear. Instead, the contract states the

damage deposit would only be refunded if “no damage” was done. I find the water bubbles are damage.

16. Finally, Ms. Bryan submitted a \$975.24 quote to repair the bedroom’s flooring. Ms. Sim argues that Ms. Bryan obtained the quote after she sold the apartment. So, she says Ms. Bryan did not suffer any loss. I disagree. Ms. Bryan provided a letter from her realtor which stated that he observed the water damage in Ms. Sim’s bedroom and took that into account when he recommended a list price. I find it is irrelevant that Ms. Bryan did not ultimately repair the flooring because she still suffered a loss because of the damage. I find Ms. Bryan reasonably withheld Ms. Sim’s \$475 damage deposit due to the floor damage, the loss of which was reflected in the apartment’s sale price. As a result, I dismiss Ms. Sim’s claim.
17. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Ms. Sim was unsuccessful, I dismiss her claim for reimbursement of tribunal fees. Ms. Bryan was successful but did not pay any tribunal fees or claim dispute-related expenses.

ORDER

18. Ms. Sim’s claims are dismissed.

Andrea Ritchie, Vice Chair