



Civil Resolution Tribunal

Date Issued: July 3, 2024

File: SC-2023-003671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Douglas v. Joseph*, 2024 BCCRT 631

BETWEEN:

JAMES DOUGLAS

APPLICANT

AND:

CHRISTABELLE JOSEPH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This is a dispute about payment of rent.

2. The applicant, James Douglas, and the respondent, Christabelle Joseph, were co-tenants in a 4-bedroom house. The applicant says when another co-tenant moved out, he paid rent for the empty room for 4 months. He says the respondent should have paid the rent as she was the cause of the vacancy. He claims \$2,900.
3. The respondent says the applicant is at fault for the unrented room. She also says she did not ask him to pay the rent for the empty room.
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 jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA 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. 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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

9. In the Dispute Notice, the applicant claimed \$4,350. In submissions, he reduced his claim to \$2,900.

The Residential Tenancy Act

10. The CRT does not have jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the director of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA) However, the RTA does not apply to disputes between co-tenants. The parties agree that the RTB has declared that the applicant and the respondent were co-tenants. I do not have a copy of that order.
11. There is no dispute between the parties and the landlord. Rather, the dispute is solely between the applicant and the respondent. For that reason, I find that that the RTA does not apply, and this dispute is within the CRT's small claims jurisdiction as set out in section 118 of the CRTA.
12. When the applicant filed the dispute, the issue of whether the respondent was a co-tenant with the applicant or was an occupant was before the RTB. The Dispute Notice claims the respondent did not have a say in who could occupy the room, and the respondent should pay for the lost income from not having the room occupied. As the RTB confirmed that the respondent was a co-tenant, the applicant now submits that as a co-tenant the respondent should have paid the rent for the empty room as she was the reason the tenant left. I have assessed the applicant's claim on that basis.

ISSUE

13. The issue in this dispute is whether the respondent owes the applicant \$2,900, or some other amount, for contribution to rent payments.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant must prove his claim on a balance of probabilities, meaning more likely than not. I have considered all the parties'

submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.

15. I find the main background facts are not disputed:
 - a. The home is a four-bedroom unit, with 4 tenants. The rent for the home was \$3,020 each month as set out in a RTB Agreement signed by the co-tenants.
 - b. Each tenant paid a portion of the rent for the home by a verbal agreement. The RTB Agreement shows the amount of each tenant's damage deposit, which I infer is one-half of that tenant's rent for that tenant's room.
 - c. In February 2023, one of the co-tenants left the home, and this room was empty from March to July 2023. The empty room's rent was \$725 each month.
16. As noted, the landlord is not a party to this dispute. I find the applicant is seeking payment from the respondent for rent he paid from March to June 2023 for the empty room. The respondent does not dispute that the applicant paid \$2,900 rent for the empty room from March to June 2023.
17. The applicant says the original tenant left because of the actions of the respondent, and a prospective tenant did not rent the room because the respondent wanted a rental agreement in the RTB form. He says she should pay him back for the rent for the empty room. The respondent says it was the applicant's behaviour that caused the room to remain empty, and that no one asked him to pay the rent for the empty room.
18. I note that there is a third co-tenant listed on the RTB agreement who is not a party to this dispute and did not give evidence.

Who was responsible to pay the rent for the empty room?

19. The RTB agreement says that where there is more than one tenant, the tenants have joint and several liability for the terms of the agreement. I find that rent is one of the terms of the agreement.

20. Joint and several liability means that the landlord could collect the entire rental amount owing under the RTB agreement from any or all the co-tenants. Joint and several liability is for the benefit of the person owed the debt, in this case the landlord. The landlord had the right to claim against all three co-tenants, or any one of them, for the rent for all four bedrooms.
21. Joint and several liability does not mean that if one person pays the total amount owing, the others have no further responsibility. A person having joint and several liability who pays a debt is entitled to receive a contribution from the others. The contribution amount is the amount the parties agree, or if there is no agreement, is equal. See *Law and Equity Act*, section 34, and *Shoker v. Vollans*, 1998 CanLII 6447 (BC CA), paragraph 4 and 5.
22. There is no evidence that the co-tenants had an agreement other than the RTB agreement. There is nothing in the RTB agreement about co-tenants' contribution for empty rooms in the house, or who is responsible for finding a new tenant. If there is no agreement as to the shares each co-tenant would pay, then each is equally responsible for payment. This means that if one tenant did not pay for any reason, each of the other co-tenants was responsible to ensure full payment of the rent.
23. Each party alleges that the other was responsible for the room being or remaining empty. I infer that they each mean there is an implied term of the co-tenant's agreement that no tenant would unreasonably frustrate attempts to fill a vacant room.
24. Implied terms are contractual terms that the parties did not expressly consider, discuss, or write down. The court (and the CRT) will only imply a term if it is necessary to give business efficacy to the contract. Such terms are founded on a common presumed intention of the parties. In other words, an implied term must be something that both parties would have considered obvious when they entered the contract. See *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216, at paragraphs 25 to 32.
25. The applicant says that the previous tenant left due to the actions of the respondent. He provides an audio recording allegedly from the previous tenant, with vague

statements of conduct possibly by the respondent. I do not find the recording compelling evidence that the respondent's actions were the sole cause of the previous tenant leaving.

26. The respondent says that the prospective tenant did not move in due to the applicant not signing a tenancy agreement. At that time, the status of the tenants as co-tenants was in dispute, and it was not until after the RTB decision that the applicant's actions were determined to be incorrect.
27. There is an obligation on each co-tenant to act reasonably to fill a vacant room in the home, but I do not find that either acted unreasonably in this case. I find it does not matter who was at fault for the empty room. The co-tenants did not come to an agreement about a new tenant. Any one of them could have ended the RTB agreement. They are equally liable for the empty bedroom's rent.
28. Because the applicant paid more than his share for March to June, the other co-tenants were unjustly enriched. They did not pay a share of the empty room's rent, which was a debt under the RTB agreement.
29. *Law and Equity Act*, section 34 provides that where a person that is jointly responsible for the debt pays more than their share, that person is entitled to contribution from the other responsible persons for any amount they paid over their proportionate share. See also *Abakhan v Halpen*, 2008 BCCA 29, paragraph 14 and 21.
30. I find that each co-tenant was responsible for one-third of the rent for the empty room, or \$966.66. So, I find the respondent owes the applicant \$966.66. The third co-tenant is not a party to this dispute, so I can make no order against them.

Interest

31. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the rent contribution of \$966.66 from the first of each month, totalling \$80.22.

32. 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 see no reason in this case not to follow that general rule. I find the applicant was partly successful in this dispute, and so he is entitled to reimbursement of \$87.50 for half of his paid CRT fees. The respondent did not pay any fees, and neither party claimed any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order the respondent to pay to the applicant a total of \$1,134.38, broken down as follows:

- a. \$966.66 in debt,
- b. \$80.22 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$87.50 in CRT fees.

34. The applicant is entitled to post-judgment interest, as applicable

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.

Deanna Rivers, Tribunal Member