



# Civil Resolution Tribunal

Date Issued: July 5, 2024

File: SC-2023-001124

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Naik v. Omar*, 2024 BCCRT 641

**BETWEEN:**

MIT NAIK

**APPLICANT**

**AND:**

WURIA KADIR OMAR

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant, Mit Naik, rented a room in a home from the respondent, Wuria Kadir Omar.<sup>1</sup>

3. The applicant says that shortly after he moved in, the respondent imposed unreasonable restrictions, such as limiting shower and laundry time. The applicant says he disagreed with the respondent about these restrictions in a text exchange, and then the respondent “kicked him out”.
4. The applicant requests that the Civil Resolution Tribunal (CRT) order the respondent to pay him a total of \$2,000, including a refund of his paid rent and security deposit, and damages for “mental harassment”.
5. The respondent says the applicant’s version of events is false, and the applicant caused more damage than the security deposit covered.
6. Both parties are self-represented in this dispute.

## **JURISDICTION AND PROCEDURE**

7. The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT’s formal written reasons.
8. In the Dispute Notice, the applicant named the respondent as Ari Kadir. However, the respondent later confirmed that their legal name is Wuria Kadir Omar. This is the name used in a preliminary decision the CRT issued on August 11, 2023. Since the applicant did not object to the use of that name after the preliminary decision or otherwise, and clearly had notice of the matter, I find it appropriate in this decision to name the respondent as Wuria Kadir Omar. I also exercise my discretion under CRTA section 61 to amend the style of cause (title page) to reflect the respondent’s legal name.
9. 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. The parties in this dispute each question the other’s credibility (truthfulness) about what occurred. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court

10. 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, the parties have provided their recollections of what occurred. Neither party requested an oral hearing, and I find it unlikely that cross-examination would reveal any inconsistencies in any party's evidence. Finally, since the applicant has already moved out, the only issue in dispute is financial compensation, rather than access to housing. For these reasons, I decided that the benefit of an oral hearing did not outweigh the efficiency of a hearing by written submissions.
11. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
12. 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 shared accommodation disputes like this one. So, I find this is a contractual roommate dispute within the CRT's small claims jurisdiction over debt and damages.
13. In his final submission, the applicant requests that the CRT order a \$10,000 fine against the respondent for "forging evidence". CRTA section 92 prohibits a person from providing false or misleading evidence in a CRT proceeding, and provides for penalties. However, the CRT has no authority to decide whether someone has committed an offence under CRTA section 92. Rather, under the *Provincial Court Act*, a BC Provincial Court judge has jurisdiction over CRTA section 92 offences, because conviction carries the possibility of imprisonment. So, I refuse to resolve the CRTA section 92 issue.

## **ISSUES**

14. The issues in this dispute are:
- a. Is the applicant entitled to a rent refund?
  - b. Is the applicant entitled a refund of the \$350 security deposit?
  - c. Is the applicant entitled to damages for harassment?

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
16. The parties had no written rental agreement. The applicant says the monthly rent was \$700, and he moved into the room on January 4, 2023. The respondent did not dispute these facts, so I accept them as accurate.
17. The evidence shows that on January 10, the respondent texted the applicant and asked him to take shorter showers, because others needed to use the shower. The applicant agreed.
18. On January 20, the respondent texted the applicant again, stating that he was only allowed to shower once per day, and that being in the bathroom for 20 minutes was too long. I summarize the subsequent text exchange as follows:
- The applicant asked for the respondent's morning schedule, so he could get up early and shower before the respondent needed the bathroom.
  - The respondent repeated that the applicant could only shower once per day, and could not shower in the morning.

- The applicant said that demand was not reasonable, and that the respondent should have told him about this restriction before he moved in. The applicant repeated that he was willing to adjust his schedule.
- The respondent replied that no one would allow the applicant to shower twice a day, and that “gas and water is expensive.” The respondent wrote, “You are not paying for 2 showers a day and that is it. If you don’t like it you can move out.”
- The parties argued further about the respondent’s rules.
- The applicant texted, “If you want me to move out, give back the deposit and refund the full month worth of rent and I will be gone... \$700 + \$350.”
- The respondent replied, “Move out today.” The respondent further texted that the applicant could not sleep in the house that night.
- The applicant wrote, “I will move out if you pay back the rent and deposit.”
- The respondent replied, “Your stuff will be in the garage.” Later that night, the respondent wrote, “I will give you back damage deposit by end of the month.”
- The applicant asked, “What about the rent?”
- The respondent replied that the applicant would get back the remaining rent if he moved out that day, and if he did not move out, the respondent would call the police to remove him.
- On January 31, the applicant requested that the respondent pay him the \$350 security deposit, plus 35% of January’s rent (\$245).
- The respondent replied that they had agreed to a 3 month tenancy, so the applicant would not get his security deposit or any January rent back.

19. Based on this text exchange, I find that the respondent demanded that the applicant move out on January 20, and agreed in writing to refund the \$350 security deposit and the remainder of January's rent if the applicant did so. The parties agree that the applicant moved out on January 20, so I find the respondent must refund the claimed \$350 security deposit and \$245 for January's remaining rent.
20. The respondent says the applicant caused damage above \$350, so is not entitled to a security deposit refund. The respondent provided photos of a dented and scratched fridge door, and a scratched floor. The applicant denies causing any damage.
21. I find the respondent has not provided evidence to prove that the applicant damaged the fridge or floor. There is no evidence that these items were undamaged before the applicant moved in. In their CRT submission, the respondent says that on the day the applicant moved out, they returned home and discovered the fridge and floor damage. However, I am not persuaded by this submission, because the respondent never mentioned this alleged damage in their texts to the applicant. Rather, when the applicant requested payment on January 31, the respondent mentioned no damage, and instead said the applicant was not entitled to any refund because they had agreed to a 3 month tenancy.
22. I find it likely that if the respondent had discovered damage on January 20, they would have told the applicant that in their January 31 text exchange about the security deposit refund. Since the respondent did not do so, I find the respondent's position is unproven.
23. For these reasons, I order the respondent to refund the applicant \$350 for the security deposit and \$245 for January rent.
24. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicant is entitled to pre-judgment interest from January 20, 2023 (the date he moved out). This equals \$42.21.

25. The applicant also claims damages for harassment, and for missed work on January 20. The applicant provided no evidence that he missed work on January 20, and no supporting evidence about his salary or hourly wage. So, I dismiss his claim for lost wages.
26. I also dismiss the applicant's claim for harassment damages. There is no legally recognized tort of harassment in British Columbia. See: *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, at paragraph 61. So, there is no legal authority for ordering damages for harassment.
27. The applicant was largely successful in this dispute. So, under CRTA section 49 and the CRT's rules I find he is entitled to reimbursement of \$150 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

## **ORDERS**

28. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$787.21, broken down as follows:
  - a. \$350 as a refund of the security deposit,
  - b. \$245 as a rent refund,
  - c. \$42.21 in pre-judgment interest under the COIA, and
  - d. \$150 in CRT fees.
29. The applicant is entitled to post-judgment interest under the COIA, as applicable.
30. I refuse to resolve the applicant's claim for a penalty under CRTA section 92. I dismiss the applicant's remaining claims.

31. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

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Kate Campbell, Vice Chair

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<sup>1</sup> The Civil Resolution Tribunal 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 addresses them respectfully. The respondent did not provide pronouns or a title, so in this decision I respectfully use the pronoun "them" to refer to the respondent.