



Civil Resolution Tribunal

Date Issued: July 19, 2024

File: SC-2023-007937

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bertacco v. Lilley*, 2024 BCCRT 699

BETWEEN:

CRYSTAL BERTACCO

APPLICANT

AND:

MELISSA LILLEY

RESPONDENT

REASONS FOR SUMMARY DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (CRT). This is not a decision on the merits of the claim.
2. The parties shared a house owned by the applicant, Crystal Bertacco. Ms. Bertacco says that the respondent, Melissa Lilleyⁱ, breached the parties' agreement by giving

insufficient notice before moving out. She seeks \$5,000 for insufficient notice and damage to her property.

3. Melissa Lilley says they were not required to give notice for various reasons, and that they did not cause any damage.
4. Both parties are self-represented.
5. For the reasons set out below, I find the CRT does not have jurisdiction to resolve this dispute, and I refuse to resolve it.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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.
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. Both parties in this dispute question each other's credibility, or truthfulness. However, disputes that involve an assessment of the parties' credibility do not necessarily require an oral hearing (*Downing v. Strata Plan VR2356*, 2023 BCCA 100). Further, as explained below, this dispute involves a jurisdictional issue which I find I can fairly decide based on the parties' submissions and evidence before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUE

9. The issue in this summary decision is whether this dispute is within the CRT's jurisdiction.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Bertacco must prove her claims on a balance of probabilities, meaning more likely than not. I have considered the parties' evidence and submissions but only refer to what is necessary to explain my decision.

Jurisdiction

11. The parties agree that Melissa Lilley lived in a downstairs rental unit with her family. Ms. Bertacco says the *Residential Tenancy Act* (RTA) does not apply to this dispute and refers to Melissa Lilley as her boarder and roommate. Melissa Lilley says the RTA prevents the rent increases proposed by Ms. Bertacco. Through CRT staff, I asked the parties to provide further submissions about whether the RTA applied to the dispute.
12. Section 2 of the RTA says that it applies to tenancy agreements, rental units, and other residential property. Landlords and tenants cannot avoid or contract out of the RTA, according to section 5. However, section 4 lists situations where the RTA does not apply. Specifically, section 4(c), says the RTA does not apply to "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."
13. From her submissions, I infer that Ms. Bertacco relies on section 4(c). She says that the RTA does not apply to this dispute as the parties were roommates. She says they treated the whole house as a common area and that she would enter the downstairs suite when needed to access stored items or to access the garage and furnace room.
14. In their submissions, Melissa Lilley says they were not roommates as they rented a whole basement suite with their own kitchen, bathroom and living area, with doors

separating the units. Ms. Bertacco does not dispute that Melissa Lilley and their family had their own bathroom and kitchen and that she generally did not use these areas. Also, text messages exchanged between the parties indicated that they would usually send a message before accessing the other's unit and that the two households only had shared use of a laundry room and entryway. So, I find that Ms. Bertacco did not share kitchen and bathroom facilities with Melissa Lilley and the exception in section 4(c) of the RTA does not apply.

15. As no other exceptions apply here, the RTA applies to this dispute and the Residential Tenancy Branch has exclusive jurisdiction over this dispute under RTA section 84.1(1). CRTA section 10(1) says the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
16. For this reason, I refuse to resolve Ms. Bertacco's claim for unpaid rent and damages under CRTA section 10(1). Because I have refused to resolve Ms. Bertacco's claim, I direct CRT staff to refund her paid CRT fees.

ORDER

17. I refuse to resolve Ms. Bertacco's claims under CRTA section 10(1).

Maria Montgomery, Tribunal Member

ⁱ 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. Melissa Lilley did not provide their title or pronouns so I will refer to them by their full name and with gender neutral pronouns throughout this decision, intending no disrespect.