



# Civil Resolution Tribunal

Date Issued: August 9, 2024

File: SC-2023-007986

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hicks v. Hutchinson*, 2024 BCCRT 758

BETWEEN:

ALI HICKS

**APPLICANT**

AND:

KATHLEEN HUTCHINSON

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This is a roommate dispute. Ali Hicks rented a two-bedroom apartment as a tenant. On April 1, 2023, Kathleen Hutchinson began renting one of the bedrooms from Ms. Hicks. The parties signed a roommate agreement that required Ms. Hutchinson to

give 60 days' notice before moving out. On August 3, 2023, Ms. Hutchinson gave notice that she was moving out at the end of August to start a new job out of town. She ended up moving out a few days later.

2. Ms. Hicks claims \$3,004, which she says includes two months' rent, utilities and other expenses. Ms. Hutchinson says she should not have to pay anything because the parties did not have a valid contract. She also says Ms. Hicks intimidated her into moving out early and incurring \$3,760 in accommodation expenses, plus lost belongings. I infer Ms. Hutchinson argues that these amounts should be set off against any debt she owes Ms. Hicks.
3. Each party is self-represented. As I explain below, I find in favour of Ms. Hicks.

## **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). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. 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 applies to landlord-tenant relationships and not roommate relationships like this one. 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.
5. The CRT conducts most hearings by written submissions, but it has discretion to decide the format of the hearing, including by telephone or videoconference. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

6. 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.
7. 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is Ms. Hicks entitled to two months' rent for Ms. Hutchinson's failure to give 60 days' notice?
  - b. Is Ms. Hicks entitled to anything for utilities or other expenses?
  - c. Is Ms. Hutchinson entitled to any setoff for accommodation costs or lost belongings?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Ms. Hicks 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.
10. On February 26, 2023, the parties signed a "roommate agreement". The agreement took effect on April 1, 2023, when Ms. Hutchinson moved into the two-bedroom apartment. Ms. Hicks was renting the apartment under a formal tenancy agreement with a landlord.
11. The roommate agreement said Ms. Hutchinson would pay Ms. Hicks \$1,504.50 in monthly rent. The rent was due two days before the first day of each month. Internet and electricity were to be split equally.

12. On August 3, 2023, Ms. Hutchinson told Ms. Hicks that she had accepted an out-of-town job offer and had to move out. Ms. Hutchinson noted that she had paid August's rent and offered to pay September's rent. Ms. Hicks pointed out that the parties' agreement said if Ms. Hutchinson did not give 60 days' notice, then she had to pay the equivalent of two months' rent as damages. Ultimately, Ms. Hicks did not pay any rent after August's rent. She moved out on August 6, 2023.
13. The roommate agreement, on its face, entitles Ms. Hicks in these circumstances to two months' rent, or \$3,009. As Ms. Hicks only claimed \$3,004 in this dispute, that is the most that she can recover here.
14. Ms. Hutchinson argues that the agreement was not a legally binding contract, but she does not explain why. She says she was not a tenant and was not added to the lease, and that this "went against" Ms. Hicks' lease. However, I find the parties' roommate agreement was independent of Ms. Hicks' lease. In any event, the evidence shows that Ms. Hicks' landlord was aware that she had a roommate.
15. Ms. Hutchinson says that at some point she realized she was paying 60% of the rent that Ms. Hicks paid the landlord. She says if she were a tenant, she would have only been responsible for 50% of the rent. That may be true, but because Ms. Hutchinson was not a tenant, the roommate agreement is what establishes her rent. Roommates are free to agree to divide rent in any way they choose.
16. Ms. Hutchinson appears to argue that 60 days' notice is unfair. 60 days is significantly more notice than tenants must give landlords under the RTA. However, as noted, the RTA's protections do not apply to roommate relationships. Absent unconscionability or some other legal reason the roommate agreement cannot be enforced, I must apply its terms.
17. A contract is unconscionable when it results from an inequality in bargaining power and results in a substantially unfair bargain (see *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122). Here, there is little evidence of inequality in bargaining power. Ms. Hutchinson freely agreed to the 60 days' notice clause. While

the higher notice period may be somewhat onerous, it is not substantially unfair, in my view. Neither is the \$1,504.50 monthly rent.

18. Finally, Ms. Hutchinson argues that she had to move out suddenly did for her safety and well-being. She says on August 5, Ms. Hicks returned from vacation, stood at Ms. Hutchinson's bedroom door, and prevented her from closing it. She says Ms. Hutchinson also yelled at her through the door. Ms. Hutchinson says all of this made her feel unsafe in her own apartment.
19. I find that Ms. Hutchinson argues Ms. Hicks breached an implied and fundamental term of the contract not to engage in behaviour that would cause a reasonable person to fear for their safety. Previous CRT decisions have found that roommate agreements may include an implied term that the parties will treat each other with respect and avoid engaging in behaviour that would cause a reasonable person to fear for their safety (see, e.g., *Wells v. Stetsko*, 2021 BCCRT 545). In such circumstances, it may be justified to end the contract without providing the usual notice. Damages, such as short-term accommodation costs, may also be recoverable. I find it appropriate to imply such a term here. However, I find Ms. Hicks did not breach that term.
20. Ms. Hicks says that when she returned from vacation she noticed Ms. Hutchinson had packed her belongings to move out, so she asked her to clarify when she was moving and whether she was paying two months' rent. She says Ms. Hutchinson refused to answer, shut the door in her face, and left the apartment. I prefer Ms. Hicks' evidence in part because it is supported by a statement from a friend, ES, who was undisputedly present at the time. However, even if I accepted Ms. Hutchinson's evidence, I would find the yelling and brief door holding did not breach the implied term mentioned above. It was a single incident that I find would not cause a reasonable person in Ms. Hutchinson's position to fear for their safety.
21. The other possible element of Ms. Hutchinson's setoff argument is for lost belongings. She says because she left the city, she was unable to collect some of her belongings and a package that was delivered to the rental unit. However, the evidence does not

show that Ms. Hicks prevented Ms. Hutchinson from returning to the unit to collect her belongings. In any event, Ms. Hicks here has not itemized the belongings or attempted to quantify their value or that of the uncollected package. So, I find no setoff is warranted.

22. Ms. Hicks only claimed \$3,004. Given my conclusion that Ms. Hicks is entitled to that amount in contractual notice damages, it is unnecessary to consider utilities, locksmith costs, or cleaning costs.
23. The *Court Order Interest Act* applies to the CRT. Ms. Hicks is entitled to pre-judgment interest on the \$3,004 in damages from August 6, 2023, to the date of this decision. This equals \$154.48
24. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Hicks was successful, so I find she is entitled to reimbursement of \$175 in paid CRT fees. Neither party claims dispute-related expenses.

## **ORDERS**

25. Within 14 days of the date of this order, I order Ms. Hutchinson to pay Ms. Hicks a total of \$3,333.48, broken down as follows:
  - a. \$3,004 in debt,
  - b. \$154.48 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
26. Ms. Hicks is entitled to post-judgment interest, as applicable.

27. 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 a court order.

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Micah Carmody, Tribunal Member