



Civil Resolution Tribunal

Date Issued: August 30, 2024

File: SC-2023-009413

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fujimoto v. Montero*, 2024 BCCRT 858

BETWEEN:

MITSURU FUJIMOTO

APPLICANT

AND:

GENESIS MONTERO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about the return of a security or damage deposit.

2. Mitsuru Fujimoto rented a room in Genesis Montero's house.¹ Ms. Fujimoto says Genesis Montero only returned \$75 of her \$325 deposit when she moved out. She claims \$250 for the balance of her paid deposit.
3. Genesis Montero says Ms. Fujimoto was late paying her rent and her deposit. They also say they bought certain household items Ms. Fujimoto requested. For these reasons, they say they were entitled to withhold \$250 from Ms. Fujimoto's deposit.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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. These are the CRT's formal written reasons.
6. 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. Here, the parties question each other's credibility, or truthfulness, to some extent. However, I find the issues of credibility are not central to this dispute. I find I am properly able to assess and weigh the documentary evidence and submissions before me. So, I find an oral hearing is not necessary in the interests of justice.
7. CRTA section 42 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.

¹ 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 the CRT addresses them respectfully throughout the process, including in published decisions. Genesis Montero did not provide their pronouns or title. So, I will use gender neutral pronouns and their full name to refer to them throughout this decision, intending no disrespect.

8. Where permitted by CRTA section 118, 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.

Residential Tenancy Act

9. 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 shares a kitchen or bathroom with an owner, as is the case here. So, I find this is a contractual dispute that falls within the CRT's small claims jurisdiction over debt and damages.

ISSUE

10. The issue in this dispute is whether Genesis Montero must reimburse Ms. Fujimoto \$250 for the part of her deposit they withheld.

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Ms. Fujimoto must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to information I find necessary to explain my decision. Genesis Montero did not provide documentary evidence, despite being given the chance to do so.
12. In June 2023, the parties agreed Ms. Fujimoto would rent a room in Genesis Montero's house on a short-term basis, beginning around July 1. I find the agreement was documented in a series of text messages between the parties. Ms. Fujimoto was to pay \$650 a month, guaranteed for two months, and could leave after one month if she wished. Genesis Montero required a \$325 deposit, \$100 of which was due immediately. It is unclear from the evidence whether the deposit was a security deposit or a damage deposit, but I find it does not matter for the purposes of this

dispute. E-transfers in evidence show Ms. Fujimoto transferred \$100 to Genesis Montero on June 13, and the remaining \$225 on July 4. It is undisputed that Ms. Fujimoto moved into the house on June 30.

13. On July 4, after Ms. Fujimoto moved in, she texted Genesis Montero to advise she had e-transferred them the remaining deposit money and her July rent. She also apologized for being late. While there is no evidence the parties had specified payment was due on the first day of the month, I find it was an implied term of their agreement that Ms. Fujimoto would pay her rent by then. Implied terms are terms the parties did not expressly consider, discuss, or write down, but are things they would have considered obvious when they entered into the agreement (see *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216). Given Ms. Fujimoto apologized for her late payments, I find it obvious the parties intended that she pay her rent by the first of the month, and the remaining part of her deposit by July 1.
14. For reasons I find are not relevant to this dispute, Ms. Fujimoto moved out of the house on July 24. It is undisputed Ms. Fujimoto asked for her deposit back, but Genesis Montero declined her request. Ms. Fujimoto says Genesis Montero refused to return the deposit because they said she had been late paying it.
15. Genesis Montero says Ms. Fujimoto did not pay anything until July 4, by which I find they mean her July rent and the balance of her deposit. They also say they bought new blankets, pillows, dishes, pots, and a microwave at Ms. Fujimoto's request. So, Genesis Montero says they withheld \$250 of the deposit to cover Ms. Fujimoto's late payments and the requested items.
16. The parties' text messages did not mention anything about circumstances where Genesis Montero could keep the deposit. In the absence of a specific contractual term allowing Genesis Montero to withhold Ms. Fujimoto's deposit because she paid her rent late or because they bought certain household items, either by request or not, I find they were not entitled to do so. It is commonly understood that security deposits are to cover unpaid rent or damage that goes beyond normal wear and tear, and that damage deposits are to cover the latter only. Genesis Montero did not say

Ms. Fujimoto failed to pay her rent at all, or caused any damage. If the parties intended the deposit to cover other things, they were free to specify that in their agreement. They did not do so. As such, I find Genesis Montero improperly withheld \$250 of Ms. Fujimoto's deposit, which he must return to her.

17. The *Court Order Interest Act* applies to the CRT. However, in the Dispute Notice issued at the start of this proceeding, Ms. Fujimoto expressly waived interest. So, I do not order any pre-judgment interest on the \$250 damages award.

18. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Fujimoto was successful, so I find she is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

19. Within 30 days of the date of this order, I order Genesis Montero to pay Ms. Fujimoto a total of \$375, including \$250 in damages and \$125 in CRT fees.

20. Ms. Fujimoto is entitled to post-judgment interest under the *Court Order Interest Act*.

21. 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.

Megan Stewart, Tribunal Member