



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Agbaje v. Bankole*, 2024 BCCRT 923

BETWEEN:

DOYINSOLA MARIA AGBAJE, NNEMOA CHIAKWELU and ASHIAT
JAJI

APPLICANTS

AND:

KEMI HERITAGE BANKOLE

RESPONDENT

AND:

DOYINSOLA MARIA AGBAJE, NNEMOA CHIAKWELU and ASHIAT
JAJI

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. These two linked disputes are a claim and a counterclaim about a rental agreement and a roommate dispute.
2. The primary applicant, Doyinsola Maria Agbaje, says the respondent, Kemi Heritage Bankole, failed to pay rent for June 2023, contrary to their agreement. She seeks \$740.24 in unpaid rent and utilities. The other applicants, Nneoma Chiakwelu and Ashiat Jaji, were Miss Bankole's roommates.
3. Miss Bankole disagrees that she owes any amount. She says she was forced to move out because the living situation was hostile. She counterclaims \$186.66 for an overcharge in monthly rent. She claims \$500 for false representation and \$523.34 for rent she paid at a new residence. She also claims \$500 to compensate her for mental and emotional harm she says she suffered while living with Ms. Chiakwelu and Ms. Jaji. She further claims \$46.76 for lost wages due to false imprisonment by Ms. Chiakwelu. Ms. Agbaje, Ms. Chiakwelu and Ms. Jaji say that her claims are false. I infer that they ask that I dismiss Miss Bankole's claims.
4. All parties are unrepresented.

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. The parties in this dispute appear to question each other's credibility or whether they are telling the truth about certain events. In *Downing v. Strata Plan*

VR2356, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what turns on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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.

Preliminary Issues

9. First, as mentioned, this decision is about 2 linked disputes. The separate dispute numbers are due to the CRT's handling of the parties' dispute applications. However, as noted above, I find the 2 disputes are a claim and counterclaim. So, in making my decision about the parties' claims, I have relied on the evidence and submissions submitted in these disputes as a whole.
10. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTB declines jurisdiction over rooming disputes not involving the landlord, like this one. So, I find the RTA does not apply and this is a contractual dispute within the CRT's small claims jurisdiction over debt and damages.

Anonymization request

11. Miss Bankole asks that her name be anonymized in this decision. She says that Ms. Agbaje, Ms. Chiakwelu and Ms. Jaji humiliated her through harassment and

intimidation. She asks for her name to be anonymized to avoid social repercussions and to safeguard her mental health.

12. Ms. Agbaje accepts the respondent's anonymization request. Ms. Chiakwelu and Ms. Jaji do not specifically oppose the request but deny that they harassed or intimidated her.
13. Parties are generally named in CRT decisions, consistent with the open court principle, which promotes transparency and integrity in the justice system.ⁱ CRT Rule 9.4 requires the CRT to consider its Access to Information and Privacy Policy when considering how to protect the parties' privacy. The policy says that parties' names will generally be included in published decisions, unless there is a need to protect a party's identity, such as if they are a minor or an adult with impaired mental capacity.
14. The policy says that in deciding whether to anonymize a decision, the CRT will consider:
 - a. The dispute's circumstances and the nature of the evidence provided,
 - b. The potential impact of disclosure on the person and any others impacted by the dispute, and
 - c. How anonymization would impact the CRT's goals of transparent decision-making processes and protection of personal information.
15. Here, I find neither the dispute's subject matter nor the evidence provided is particularly sensitive. While Miss Bankole describes social repercussions, she does not explain how disclosing her name in this decision would cause emotional stress.
16. Overall, I find Miss Bankole's reasons for requesting anonymity do not outweigh the importance of transparency and the open court principle. So, I deny Miss Bankole's anonymization request and I have used her full name in this decision.

ISSUES

17. The issues in this dispute are:

- a. Must Miss Bankole pay Ms. Agbaje anything for unpaid rent and utilities?
- b. Must Ms. Agbaje, Ms. Chiakwelu or Ms. Jaji pay Miss Bankole anything for misrepresentation, false imprisonment, June rent, or mental distress?

EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, the applicants in their respective disputes must prove their claims on a balance of probabilities, which means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

19. Ms. Agbaje, Ms. Jaji, and Ms. Chiakwelu lived together in a basement suite. Late in 2022, Ms. Agbaje left the province to pursue employment opportunities, so she arranged for Miss Bankole to sublet her room.

20. Ms. Agbaje and Miss Bankole discussed renting the room in text messages. Ms. Agbaje explained that the rent was \$700 per month plus utilities. Miss Bankole requested that they sign a written contract, so they signed a document with the heading "Commercial Sublease Agreement". Ms. Jaji and Ms. Chiakwelu signed as witnesses but were not parties to the contract. I find the agreement was between Ms. Agbaje and Miss Bankole. On this basis, I dismiss Ms. Chiakwelu's and Ms. Jaji's claims against Miss Bankole.

21. The written agreement did not include a dollar amount for the rent but stated "the amount of rent and the conditions of payment are the same as under the Master Lease". The agreement was for a 9-month term: October 1, 2022, to June 30, 2023. Text messages between Ms. Agbaje and Miss Bankole reveal that they agreed that one month's notice was required to end their agreement. I find the text messages as well as the signed written agreement form the contract. I find they agreed the rent

was \$700 given that this amount was clear in text messages, as opposed to the less specific statement in the written agreement. I find that Ms. Agbaje and Miss Bankole agreed that rent was \$700 per month and that the agreement would end on June 30, 2023, or upon one month's notice.

Must Miss Bankole pay Ms. Agbaje anything for unpaid rent and utilities?

22. It is undisputed that Miss Bankole moved out on May 31, 2023, without giving notice, and did not pay rent for June. Miss Bankole says that she moved out because of the abusive, harassing, and intimidating conduct of Ms. Chiakwelu and Ms. Jaji. The evidence is clear that in March, April, and May of 2023, the roommates were frequently in conflict and this sometimes lead to police intervention. In infer that Miss Bankole argues that this conduct prevented her from fulfilling the terms of the contract. However, I find this unproven. Her agreement with Ms. Agbaje to rent a room was not conditional upon being compatible with her roommates.
23. Miss Bankole notified Ms. Agbaje that she was moving out on May 31, 2023. Ms. Agbaje responded with "okay". Miss Bankole implies that, with this response, Ms. Agbaje agreed to waive the notice period. However, Ms. Agbaje promptly sent another message asking for June rent. This indicates Ms. Agbaje did not agree to remove the notice requirement from their agreement.
24. As noted above, the written agreement said: "the amount of rent and the conditions of payment are the same as under the Master Lease." Miss Bankole relies on this provision to argue that her rent obligation was not the \$700 amount that she agreed to and paid for 8 months but was \$676.67, the amount Ms. Agbaje paid monthly for the room. Miss Bankole says she overpaid by \$23.33 each month (for a total of \$186.66) contrary to the agreement, and asks that this amount be returned to her. She also argues that this amount was a damage deposit that should be returned to her because she caused no damage.

25. For the reasons stated above, I found that the parties agreed to \$700 as the rent. I have reviewed the text messages and audio discussions provided and I find that the parties did not agree that this amount was a damage deposit. So, I dismiss this claim.
26. Miss Bankole asks for \$500 in damages for false representation. She says that Ms. Agbaje incorrectly held herself out as a tenant at the residence and did not have legal authority to make an agreement with her. False representation or misrepresentation is a false statement of fact made during negotiations that would induce a reasonable person to enter into the contract. It must also result in a detriment to the person who relied on it. The difficulty for Miss Bankole is that, even if Ms. Agbaje was not a legal tenant, it does not appear that Miss Bankole suffered any detriment or damage by entering into the contract. In any case, Ms. Agbaje provides clear evidence that she was a party to the residential tenancy agreement and she had the landlord's consent to make an agreement with Miss Bankole. I dismiss this part of Miss Bankole's claim.
27. I find Miss Bankole did not give one month's notice as required by the agreement. So, I find she must pay \$700 rent as well as an amount for utilities for June 2023. Messages provided by Ms. Agbaje from her landlord show the utility payment for June was \$40.24. Miss Bankole says she agrees to pay this amount for utilities and has already attempted to pay it. So, I find that Miss Bankole must pay Ms. Agbaje \$740.24.
28. Miss Bankole says that she offered to find someone to take over the rental agreement but that Ms. Agbaje did not respond to this offer. Miss Bankole does not use these words, but I infer she argues Ms. Agbaje was required to mitigate her losses and failed to do so.
29. The party alleging a failure to mitigate bears the burden of proving both that the other party failed to make reasonable efforts to mitigate, and that mitigation was possible.ⁱⁱ Here, Ms. Bankole did not provide documentary evidence that Ms. Agbaje could have easily found a new roommate, she only says she could have done so for

Ms. Agbaje but does not explain how. In these circumstances, I find Ms. Bankole has not met her burden of proving Ms. Agbaje failed to mitigate her losses.

Must Ms. Agbaje, Ms. Chiakwelu or Ms. Jaji pay Miss Bankole anything for false imprisonment, June rent, or mental distress?

30. Miss Bankole says that Ms. Chiakwelu held her hostage which prevented her from attending work on time. She claims \$46.76 in lost income. In tort law, holding another hostage is known as false imprisonment. To succeed in a false imprisonment claim, Ms. Bankole would need to show that:
 - a. She was totally deprived of liberty,
 - b. The deprivation was against her will, and
 - c. It was caused by Ms. Chiakwelu.ⁱⁱⁱ
31. Confinement may be the result of direct force or the threat of force.^{iv} Miss Bankole explains that Ms. Chiakwelu prevented her from leaving the home by sitting in a chair in front of the only exit. She presents text messages, a brief video, and a signed statement from a friend, RL, in support of her claim.
32. RL was not present for the alleged false imprisonment but says Miss Bankole called him on May 24, 2023, while she was being held hostage by Ms. Chiakwelu. RL says that Miss Bankole went to stay with him in Nanaimo because of the conflict.
33. The video shows an individual sitting in a chair before a door which appears to be an exit, based on its location in the common area. In one text message, Miss Bankole tells her workplace that she will be 30 minutes late. In another undated text message, she reports being held hostage to Ms. Agbaje who says she already heard about it from Ms. Chiakwelu.
34. What is not clear is if Miss Bankole could leave the home using other avenues or use her smartphone to seek assistance. Even if Ms. Chiakwelu prevented Miss Bankole from leaving, Miss Bankole has not established that this resulted in a loss

of income. She has not provided evidence such as pay stubs or a work schedule to prove her hourly wage or that she lost income on May 23, 2023. I find she has not proved she suffered any loss and I dismiss this claim.

35. Miss Bankole claims further damages because of her roommates' conduct. She claims \$500 in compensation for damage to her mental and emotional health caused by household violence and trauma. She says her roommates' conduct forced her to move, so she claims \$523.34, her rent for June at a new residence above what she would have paid under her agreement with Ms. Agbaje.
36. I will first address the claim relating to damages to mental and emotional health. Miss Bankole does not say that her roommates were physically violent but describes significant conflict in the home. Miss Bankole describes having her private space invaded by her roommates. She provides evidence of heated verbal arguments that required police intervention on at least one occasion. I find that this evidence demonstrates significant conflict in the home. I note that there is no tort of harassment in BC.^v I considered whether the tort of intentional infliction of mental distress applied here. However, this would require Miss Bankole to prove mental distress with medical evidence which she has not provided.^{vi} Given all the above, I find there is not enough evidence for me to conclude that Miss Bankole experienced mental distress.
37. I turn now to considering Miss Bankole's claim for June rent. She is essentially claiming that Ms. Chiakwelu and Ms. Jaji forced her to breach the agreement she had with Ms. Agbaje. While there was conflict, I find Miss Bankole has not demonstrated that she was unable to provide a month's notice before moving, in accordance with her agreement with Ms. Agbaje.
38. For the above reasons, I find that Miss Bankole is not entitled to damages for mental distress or her June rent and I dismiss these claims.
39. The *Court Order Interest Act* applies to the CRT. Ms. Agbaje is entitled to pre-judgment interest on the unpaid rent amount of \$700 from May 31, 2023, the date

the rent payment was due, to the date of this decision. This equals \$45.67. Ms. Agbaje does not dispute that she was offered the utility payment of \$40.24 and did not accept the e-transfer. So, I find she is not entitled to interest on this amount.

40. 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. Ms. Agbaje was successful so I find Miss Bankole must pay her \$125 in CRT fees. Miss Bankole was unsuccessful, so I dismiss her claims for tribunal fees. No parties claimed dispute-related expenses.

ORDERS

41. Within 60 days of the date of this order, I order Miss Bankole to pay Ms. Agbaje a total of \$911.10, broken down as follows:
- a. \$740.24 for unpaid rent and utilities,
 - b. \$45.86 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
42. Ms. Agbaje is entitled to post-judgment interest, as applicable.
43. 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.

Maria Montgomery, Tribunal Member

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- ⁱ *Midwinter v. The Owners, Strata Plan BCS 1347*, 2023 BCCRT 1117, at paragraph 13.
- ⁱⁱ *Southcott Estates Inc. v. Toronto Catholic District School Board*, [2012] 2 SCR 675 at paragraph 24
- ⁱⁱⁱ *Huang v. Silvercorp Metals Inc.* 2016 BCSC 278 at para 24.
- ^{iv} Allen M. Linden in *Canadian Tort Law* (7th ed.) (Butterworths: Ontario, 2001).
- ^v *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61.
- ^{vi} *Lau v. Royal Bank of Canada*, 2017 BCCA 253). As discussed in the non-binding but persuasive decisions in *Eggberry v. Horn et al*, 2018 BCCRT 224 and *Hjorth v. Desroches*, 2021 BCCRT 1296