



Civil Resolution Tribunal

Date Issued: September 20, 2024

File: SC-2023-007654

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fiola v. Shaw*, 2024 BCCRT 937

BETWEEN:

BETTY ANN FIOLA

APPLICANT

AND:

DAVID SHAW

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Betty Ann Fiola rented a room in David Shaw's rented apartment. Less than two months in, Mr. Shaw told Ms. Fiola to move out with 3 days' notice. Ms. Fiola claims \$570 for rent she paid, \$300 for her damage deposit, and \$131.25 for having a

locksmith unlock her bedroom door. Mr. Shaw, I infer, says I should dismiss the claim.

2. Each party is self-represented. As I explain below, I allow Ms. Fiola's claim in part.

JURISDICTION AND PROCEDURE

3. 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. I find that this dispute falls within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.
4. 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.
5. 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.
6. Where permitted by CRTA section 118, 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. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Is Ms. Fiola entitled to a rent refund? If so, how much?
 - b. Was Mr. Shaw entitled to keep any of the \$300 damage deposit?
 - c. Is Ms. Fiola entitled to reimbursement for the \$131.25 locksmith costs?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Ms. Fiola 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. Mr. Shaw did not provide any documentary evidence.
9. Most of the facts are undisputed and documented in texts between the parties. Mr. Shaw had a room for rent in an apartment he rented from a third party. A mutual friend connected him with Ms. Fiola, who was looking to share an apartment. Ms. Fiola agreed to pay \$500 monthly rent, starting June 1, 2023. I find the agreement was for an indefinite term on a month-to-month basis.
10. In early May 2023, by agreement, Ms. Fiola started moving her things in. On June 1, 2023, Ms. Fiola paid Mr. Shaw \$800 by e-transfer to cover June's rent and an agreed \$300 damage deposit. Text messages show that parties got along well. Mr. Shaw was generally not home except on some weekends. On June 30, Mr. Shaw asked for July's \$500 rent plus \$70 for utilities for June. Ms. Fiola e-transferred that amount that day.
11. In early June, Mr. Shaw's ex-wife, S, arrived to stay for three weeks. Ms. Fiola was initially okay with this. Unfortunately, she and S did not get along. S continued to stay in the apartment beyond the initial three weeks and into July. Ms. Fiola says S went into her bedroom without permission, lit a file box on fire, and spilled

something on her mattress cover, ruining it. Text messages show that Ms. Fiola and S each complained to Mr. Shaw about the other's behaviour.

12. Ultimately, Mr. Shaw decided that Ms. Fiola had to move out. In a July 4 text message, he told Ms. Fiola to leave by Friday, July 7, or he would call the police. Ms. Fiola noted she had just paid July's rent and asked about the damage deposit. Mr. Shaw responded that they had "no legal agreements so please just leave."
13. Although the evidence is not entirely clear, I find Ms. Fiola substantially moved out on July 7 as requested. At some point she became locked out of her bedroom. On July 10, Ms. Fiola hired a locksmith to gain access to the bedroom to retrieve her belongings.
14. Mr. Shaw's submissions are brief. He says Ms. Fiola "took over" his entire place, searched through his belongings, verbally assaulted his elderly parents, and started rumours. I infer that he argues that these things amounted to serious breaches of the parties' unwritten roommate agreement, entitling him to end it without notice. I disagree. First, Ms. Fiola denies doing any of these things. She says Mr. Shaw invited her to move belongings into the shared space, which is supported by text messages. Second, there is no objective evidence, such as witness statements from S or Mr. Shaw's parents, to support the other allegations, so I find them unproven. Third, even if the allegations are accurate, they are not, on their own, serious enough to undermine the foundation of the roommate relationship. With that, I find that Mr. Shaw ended the parties' agreement on July 4, 2023 without cause and with three days' notice.
15. Contrary to Mr. Shaw's text assertion, I find the parties did have a "legal agreement". Oral agreements are binding like written agreements, but their terms can be difficult to prove. A common term in a roommate agreement is how much notice each roommate must give before moving out or demanding the other move out. There is no suggestion here that the parties agreed on any particular notice period. In the circumstances, I find it appropriate to imply a reasonable notice period. Implied terms are terms that the parties did not expressly discuss or write

down. The CRT has implied a reasonable notice period of one month in co-tenant or roommate agreements (see e.g., *Agyemang v. Paul*, 2023 BCCRT 352). Given the short roommate relationship here, I find one month, or slightly less, is appropriate. This means that Mr. Shaw breached the contract by ending it with only 3 days' notice when he should have given Ms. Fiola at least until the end of July to move out.

16. Damages for breach of contract are intended to put the non-breaching party in the position they would have been in had the contract been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 219 at paragraph 38). Ms. Fiola says she had to pay rent twice for July, but she did not provide evidence of what she paid to secure other accommodations for July. Instead, she claims \$570, which was the \$500 rent she paid Mr. Shaw for July, plus \$70 that I find was for June's utilities. I find a pro-rated rent refund is appropriate. The CRT has granted rent refunds in other decisions with similar facts (see, e.g., *Kumar v. Kucharyshen*, 2021 BCCRT 828). Ms. Fiola was required to move out by July 7, so she stayed 22.5% of July. She is entitled to a refund of 77.5% of \$500, or \$387.10. She is not entitled to any refund for utilities, which I find were not pre-paid.
17. As for the damage deposit, generally such deposits must be refunded if there is no damage or other valid reason to keep the deposit. Mr. Shaw does not allege any damage or provide any other reason to keep the deposit, so I order him to refund the \$300 to Ms. Fiola.
18. The last thing is the \$131.25 locksmith charge. Ms. Fiola says S locked the door on her. However, in contemporaneous texts to Mr. Shaw, Ms. Fiola said she was not sure how the bedroom door became locked. She said she closed it behind her and later returned to find it locked. Here, Ms. Fiola does not explain how she determined that S locked the door. I find she has not proven that Mr. Shaw should bear the cost of the locksmith. I dismiss this aspect of her claim.
19. In total, Ms. Fiola's proven debt and damages are \$687.10. I order Mr. Shaw to pay that amount.

20. The *Court Order Interest Act* applies to the CRT. Ms. Fiola is entitled to pre-judgment interest on the \$687.10 from July 8, 2023, to the date of this decision. This equals \$41.95.

21. Neither party paid any CRT fees, and neither claims any dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order Mr. Shaw to pay Ms. Fiola a total of \$729.05, broken down as \$687.10 in debt and \$41.95 in pre-judgment interest under the *Court Order Interest Act*, and

23. Ms. Fiola is entitled to post-judgment interest, as applicable.

24. 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.

Micah Carmody, Tribunal Member