



Civil Resolution Tribunal

Date Issued: December 6, 2024

File: SC-2024-002844

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bray v. Fast*, 2024 BCCRT 1241

BETWEEN:

MARYRUTH MARGARET BRAY

APPLICANT

AND:

LYNDA FAST

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a pet and damage deposit. The applicant, Maryruth Margaret Bray, says the respondent, Lynda Fast, refused to return the \$650 deposit without justification. Ms. Bray claims the deposit amount.

2. Ms. Fast denies liability. She says Ms. Bray left damage to her rental property in excess of the deposit amount.
3. The parties represent themselves.
4. For the reasons that follow, I find Ms. Bray has proven a small part of her claim.

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). 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 says it does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.
6. In additional submissions, the parties agreed that Ms. Fast owned the house and shared kitchen and bathroom facilities with Ms. Bray. 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.
7. 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.
8. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and

submissions before me. Further, 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

9. 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.
10. 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.

ISSUE

11. The issue in this dispute is whether Ms. Fast must return the \$650 deposit to Ms. Bray.

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant has the burden of proof in a civil claim. However, as acting landlord, I find Ms. Fast must prove any damage to the rental property entitling her to keep the damage deposit. This includes showing that the rental premises were in better condition at the beginning of the tenancy as compared to the end. See *Griffin Holding Corporation*, 2016 BCSC 2013, at paragraph 28 and *Lawrence v. Sidhu*, 2024 BCCRT 93 at paragraph 5.
13. 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.
14. As noted above, Ms. Bray rented accommodation from Ms. Fast. The tenancy terms are not in evidence. However, it is undisputed that Ms. Bray provided Ms. Fast a pet and damage deposit of \$650 at the start of the tenancy.

15. A damage deposit typically covers damage that goes beyond normal wear and tear only. See, for example, *Cerelle Corp. v. Bebe Cece Ventures*, 2002 BCPC 225 at paragraph 56. Absent any evidence showing otherwise, I find that the parties agreed to these typical terms. That is, the deposit would cover damage, including pet damage, that went beyond normal wear and tear only.
16. It is undisputed that Ms. Bray owns 2 dogs and they stayed with her during the tenancy. Another tenant, GM, had a dog, and Ms. Fast had a dog as well.
17. Ms. Bray admits that at some point, she broke her bedroom door and made efforts to fix it. Ms. Bray subsequently left the tenancy. Ms. Bray says Ms. Fast refused to return the deposit on March 7, 2024.

Must Ms. Fast return the \$650 deposit to Ms. Bray?

18. As Ms. Fast bears the burden of proof, I will start with her submissions. Ms. Fast says she is entitled to keep the entire deposit because the following items were left uncleaned or unrepaired:
 - a. after a contractor cleaned the carpet, a month later Ms. Bray's dog urinated and defecated on it,
 - b. her dog urinated on GM's hall carpet many times,
 - c. her dog urinated on Ms. Fast's wool carpet,
 - d. her dog scratched a box spring leaving permanent damage,
 - e. her dog scratched the front door repeatedly leaving damage,
 - f. her dog scratched paint off Ms. Fast's bedroom door, and Ms. Bray repainted it leaving a patchy appearance, and
 - g. Ms. Bray incorrectly installed her replacement bedroom door, trim, and doorknob.

19. Ms. Bray denies most of these allegations. She says that after Sparke Kleen cleaned the living room carpet, there were no pet stains. Any further pet stains were cleaned right away. She says Ms. Fast cannot claim for GM's carpet. She also says she does not know what condition the box spring was in when she moved out.
20. As to her bedroom door, Ms. Bray admits that she did not match the top doorknob side trim to the trim very well and would like to pay for that to be fixed, which she values at \$150. She denies touching or damaging the hinge side trim, top trim, or trim outside her bedroom door. She says the doorknob fits just like the original.
21. Ms. Bray also says that the front door already had chips, dents, and scratches. She said the door was hard to open and close in cold weather. She also says that the other dogs scratched the door.
22. Overall, I am satisfied that Ms. Bray caused damage to 1) her bedroom door, 2) box spring, 3) Ms. Fast's bedroom door, and 4) living room carpet. I am also satisfied that the damage goes beyond ordinary wear and tear. My reasons follow.
23. Ms. Fast provided a witness statement from another tenant, GM. GM wrote they were Ms. Fast's tenant before Ms. Bray moved in and during Ms. Bray's tenancy. GM previously stayed in Ms. Bray's room. GM commented on each of Ms. Fast's above-noted items and corroborated Ms. Fast's submissions that they sustained damage after Ms. Bray moved in. GM added that Ms. Fast gave Ms. Bray the opportunity to repair the damage, but the damage remained unaddressed.
24. GM fell short of stating that Ms. Bray or her dog caused the damage. For example, GM simply wrote a "dog" caused damage, and not whose dog. That said, I find Ms. Bray is responsible for damage to her bedroom door, including trim and doorknob, as she admitted to breaking and replacing it. I also find any damage to the box spring is likely Ms. Bray's responsibility since the submissions and GM's evidence indicate she used it. I also find that Ms. Bray was likely responsible for damage to Ms. Fast's door as she attempted to repaint it. I find it unlikely that she simply did it as a favour, as she submits. Finally, Ms. Bray does not deny that her dogs soiled

the living room carpet after Sparkle Kleen cleaned it. I accept Ms. Fast's submission that there were still some remaining stains as this is corroborated by GM's evidence.

25. As for the other items, I find it unproven that Ms. Bray caused the other damage.

This is because these items, such as the front door, were used by other individuals that also had dogs. I find Ms. Fast has not proved it was Ms. Bray's dogs specifically that caused the damage.

26. I turn to damages. To support her out-of-pocket expenses, Ms. Fast only provided an estimate of \$375, or \$393.75 with tax, for the following services: trimming the bedroom door down so it does not bind while closing it, sanding and painting a door, fixing trim around the door and applying caulk as needed, fixing a loose handle, and sanding and painting a bedroom door scratched by a dog with repairs attempted by a tenant. I infer the loose handle is a reference to the doorknob. I find this estimate is for repairing both bedroom doors and I find Ms. Fast is entitled to keep \$393.75 of the deposit to account for it.

27. Ms. Fast says \$50 is equivalent to damage done to the box spring. A photo shows ripped fabric on it. Given the size of it, I find this is beyond ordinary wear and tear. On a judgment basis, I award \$50 for this damage.

28. This leaves the living room carpet. Ms. Fast says she spent \$157.50 to clean it. There is no invoice or estimate to support this amount. That said, on a judgment basis, I find this amount is likely accurate or at least a reasonable approximation. I also find that dog soil stains are beyond ordinary wear and tear. So, I find Ms. Fast is entitled to keep this amount.

29. Given the above, I find Ms. Fast was entitled to keep the sum of \$393.75, \$50, and \$157.50 for a total of \$601.25. So, I find Ms. Fast must return to Ms. Bray \$48.75.

30. The *Court Order Interest Act* applies to the CRT. Ms. Bray is entitled to pre-judgment interest on the deposit amount of \$48.75 from March 7, 2024, the date

Ms. Bray says Ms. Fast had to return the deposit, to the date of this decision. This equals \$1.86.

31. 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. Bray was partially successful. So, I find Ms. Bray is entitled to partial reimbursement of \$62.50 in CRT fees. The parties did not claim any specific dispute-related expenses. So, I order none.

ORDERS

32. Within 30 days of the date of this order, I order Ms. Fast to pay Ms. Bray a total of \$113.11, broken down as follows:

- a. \$48.75 for the partial return of a deposit,
- b. \$1.86 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

33. Ms. Bray is entitled to post-judgment interest, as applicable.

34. 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.

David Jiang, Tribunal Member