



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

NATALIE CLARE BEHAGUE

APPLICANT

A N D :

GREGORY JAMES VISCO

RESPONDENT

A N D :

NATALIE CLARE BEHAGUE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Natalie Clare Behague and Gregory James Visco are former roommates. Dr. Behague sublet a room from Mr. Visco. When she moved out, Mr. Visco withheld her \$300 security deposit. She says he had no basis to do so. She asks for an order he pay her \$300.
2. Mr. Visco says she left her room and other areas of the unit dirty and failed to fulfill some other terms of their agreement. He asks me to dismiss Dr. Behague's claims. He counterclaims for an order she pay him \$445 in cleaning and other costs.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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 says 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.
5. 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. In some respects, both parties of this dispute question the credibility, or truthfulness, of the other. Oral hearings can help resolve credibility issues, but they are not mandatory. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination might help resolve them. The questions where credibility is at issue are not central to resolving this dispute. More importantly, it would be disproportionate to hold an oral hearing given the dispute's low monetary stakes. I therefore decided to hear this dispute through written submissions.

6. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
7. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.
8. Generally, the CRT does not have jurisdiction over residential tenancy disputes. However, the Residential Tenancy Branch refuses jurisdiction over roommate disputes like this one. For that reason, I find the dispute is within the CRT's small claims jurisdiction.

ISSUES

9. The issues in this dispute are:
 - a. Did Dr. Behague forfeit the security deposit by abandoning the room?
 - b. Is Mr. Visco entitled to any compensation?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Dr. Behague must prove her claims on a balance of probabilities. This means more likely than not. Mr. Visco must prove his counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. On January 10, 2022, the parties agreed to a written "Residential Room Rental Agreement". The agreement required Dr. Behague to "share in the cleaning of common areas of the house" and to keep her own room clean. The agreement also required Dr. Behague to pay rent and a share of internet and hydro. It says nothing about any other shared expenses. Dr. Behague paid a \$300 security deposit the same day.

12. On April 18, 2023, Mr. Visco emailed Dr. Behague and their other roommate giving them notice he was going to find new roommates. He said he wanted new people in for June 1. Dr. Behague emailed back asking to stay until the end of June. Mr. Visco agreed to this. Mr. Visco did not give a reason for the eviction other than “needing a change”.
13. On April 30, Dr. Behague texted Mr. Visco that she had found a new place for June 15, and asked if it was ok to stay until then. Mr. Visco agreed. On May 26, Dr. Behague emailed Mr. Visco asking about the security deposit. Mr. Visco said he would be able to send it after she moved out so he could “review your room”.
14. Dr. Behague says that on the morning of May 31, Mr. Visco suddenly demanded she leave by the end of the day. Mr. Visco’s submissions say this happened on May 30, but I find the text messages in evidence confirm it was May 31. The parties both say the other yelled at them, but I find it unnecessary to decide exactly what happened. It is enough to say things became heated, and Dr. Behague reasonably left until she could return with friends and a car to move her things. She moved out in the early evening.
15. On June 2, 2023, Dr. Behague emailed Mr. Visco asking for her security deposit. On June 6, Mr. Visco emailed back that Dr. Behague had taken some of his dishes and left the room and common areas dirty. Dr. Behague returned the dishes in question, which she says she took by mistake in her rush to leave. Mr. Visco no longer alleges she took any of his items. He refused to return her security deposit, and demanded she pay him \$445, the amount he counterclaims for.
16. I will deal with the deposit first. Mr. Visco argues that Dr. Behague forfeited the deposit by “abandoning” the room. He says he determined this by “looking at the *Residential Tenancy Act*” but does not explain his argument further. Leaving aside whether abandoning the room would automatically disentitle her to the security deposit as he says, I do not agree that she abandoned the room. As noted, Mr. Visco’s own submissions confirm he told her to leave. He says his decision was the result of ongoing behaviour issues, such as failing to clean or buy cleaning supplies, leaving

the bathroom fan on too long, and using a sink after he had painted a countertop. The final straw on May 31 was that Dr. Behague had unplugged his coffee machine. Even if true, between roommates these are relatively minor issues that do not justify immediate eviction. This is especially so when there were only 15 days left in the tenancy anyway. So, I find that Mr. Visco breached the parties' agreement about the June 15 move out date. Dr. Behague is therefore entitled to the deposit's return, subject to Mr. Visco's various counterclaims, which I will address next.

17. Mr. Visco's main claim is about cleaning he says he had to do after Dr. Behague left. He says she failed to leave both her room and some common areas reasonably clean. Mr. Visco breaks his claim down as \$180 to clean Dr. Behague's room, \$50 to empty a garbage can, \$50 to clean the fridge, freezer, and cupboards, \$25 to wash some dishes and put them away, and \$50 to wash her linens. I agree with Mr. Visco that there was an implied term in their agreement that Dr. Behague would leave the room and common areas reasonably clean and tidy when she moved out. However, I agree with Dr. Behague that what was reasonable in the circumstances must account for Mr. Visco's sudden and unjustified decision to require her to leave with only a few hours' notice.
18. Mr. Visco provided photos showing a dirty window track, dust and dirt behind a bed and on a baseboard, and scuffs on a wall where it contacted the bed frame. These are closeup photos that give no indication of the general state of Dr. Behague's room. There are no photos proving any other issues with her room or common areas.
19. Dr. Behague provided statements from two friends who helped her move out. They both say the room was clean when they left. Dr. Behague admits that in her rush to leave, she left one meal's worth of dirty dishes and up to five items in the freezer and fridge. She says she used her own linens, so there was nothing to launder.
20. If Mr. Visco had allowed Dr. Behague to leave when agreed, with plenty of notice, I find these would be reasonable things to expect her to clean. However, it is unreasonable in the context of Mr. Visco's decision to suddenly evict her. It is unclear when Mr. Visco expected Dr. Behague to thoroughly clean and inspect the room and

common areas. As for the wall, the photo shows a very small amount of damage, which I find is reasonable wear and tear. There is no evidence Mr. Visco paid anything to repair the wall, and he did not claim any specific compensation for it.

21. Mr. Visco also provided a photo that shows very small scratches or scuffs on a bike frame. He claims Dr. Behague caused these, which she denies. He did not mention bike damage in his emails to Dr. Behague or in the Dispute Notice, nor did he claim compensation for it. In any event, I find the photo does not prove Dr. Behague caused the damage. Even if it did, I am not satisfied it shows anything that would justify compensation. I agree with Dr. Behague that the damage is superficial.
22. Mr. Visco also alleges Dr. Behague failed to do her share of the cleaning in May 2023. He claims \$30. There is no evidence to prove this, such as text messages or emails between the parties at the time or after Dr. Behague moved out. So, I find it unproven that Dr. Behague failed to do her share of the cleaning.
23. Mr. Visco also claims \$10 for toilet paper, relying on the roommate agreement. Dr. Behague says she always contributed to common expenses when asked. The roommate agreement does not include a term about shared expenses like toilet paper. In any event, there is no evidence to support this claim, such as a receipt or correspondence between the parties at the time or after Dr. Behague moved out. I find it unproven as well.
24. Finally, Mr. Visco alleges Dr. Behague intentionally filed down the tines on a key, rendering it unusable. He claims \$50. Dr. Behague denies she did this, or even had the means to do so. Mr. Visco provided a photo showing an old key. It is worn down but there is no way to tell it had been intentionally filed, or that it would no longer work. I find Mr. Visco has not proven that Dr. Behague damaged the key beyond use.
25. I therefore find that Mr. Visco has failed to establish any basis to withhold any of Dr. Behague's damage deposit. I order him to pay her \$300 and dismiss his counterclaims.

26. The *Court Order Interest Act* applies to the CRT. Dr. Behague is entitled to pre-judgment interest from June 1, 2023, to the date of this decision. This equals \$19.67.
27. 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. Dr. Behague was successful, so I order Mr. Visco to pay her \$125 in CRT fees. I dismiss Mr. Visco's claim for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

28. Within 14 days of this decision, I order Mr. Visco to pay Dr. Behague a total of \$444.67, broken down as follows:
- a. \$300 in debt,
 - b. \$19.67 in pre-judgment interest, and
 - c. \$125 in CRT fees.
29. Dr. Behague is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. I dismiss Mr. Visco's counterclaims.
31. This is a validated decision and order. Under CRTA section 58.1, 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.

Eric Regehr, Vice Chair