



Civil Resolution Tribunal

Date Issued: January 23, 2025

File: SC-2023-008764

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Doucett v. Chamulak*, 2025 BCCRT 104

BETWEEN:

DEVON DOUCETT and MORGAN DOUCETT

APPLICANTS

AND:

ARLENE CHAMULAK

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a roommate dispute. Devon Doucett and Morgan Doucett are sisters. In April 2023, they signed a roommate agreement with Arlene Chamulak to share a 2-bedroom, 2-bathroom condo in Vancouver.

2. The Doucetts say Ms. Chamulak evicted them without notice in July 2023. They claim a refund of their \$2,000 security deposit and \$1,850 in rent, for a total of \$3,850.
3. Ms. Chamulak says the Doucetts failed to give sufficient notice that they were moving out, so she does not owe them anything.
4. Devon Doucett represents the Doucetts, and Ms. Chamulak is self-represented.

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. 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 in the interests of justice.
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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
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.

ISSUES

9. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to decide this dispute?
 - b. Did Ms. Chamulak evict the Doucetts or had they already moved out?
 - c. Are the Doucetts entitled to a \$3,850 refund?

EVIDENCE AND ANALYSIS

10. As the applicants in this civil proceeding, the Doucetts must prove their claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

11. On April 13, 2023, the Doucetts responded to Ms. Chamulak's Facebook Marketplace advertisement for a 2-bedroom, 2-bathroom condo for \$3,700 per month. The parties disagree about what version of the advertisement the Doucetts responded to, and whether it referred to roommates, but based on my findings below, I find nothing turns on this.

12. On April 20, 2023, the parties signed a roommate agreement with the following relevant terms:

- a. Ms. Chamulak had a lease agreement with her landlord for the condo from June 1, 2022 to May 31, 2023, after which the lease continued month to month. Ms. Chamulak would pay rent to her landlord under the lease agreement.
- b. Ms. Chamulak would also pay for all utilities, including heat, wifi, cable, and a cleaning service.
- c. The Doucetts would occupy the apartment as Ms. Chamulak's roommates from May 1, 2023 to October 31, 2023, after which the agreement would continue on a month-to-month basis if all roommates agreed.

- d. The Doucetts agreed to pay Ms. Chamulak monthly rent of \$3,700 which included use of the condo space and all building facilities, all utilities, 1 parking spot, and use of bike storage lockers.
 - e. The Doucetts paid Ms. Chamulak a \$2,000 security deposit on April 19.
 - f. Ms. Chamulak required a minimum of 30 days' notice upon moving out.
13. When the parties signed the roommate agreement, Ms. Chamulak was regularly traveling for work and was rarely in Vancouver. Despite their written contract, the parties verbally agreed that when Ms. Chamulak was out of town, the Doucetts would have use of the entire condo. The parties dispute the terms of their verbal agreement for the times when Ms. Chamulak was in Vancouver. More on this below.
14. At some point after signing the roommate agreement the Doucetts moved into the apartment and paid Ms. Chamulak rent for May and June without incident. The landlord entered the unit in early June for an inspection related to a plumbing issue. After that, the landlord started emailing the Doucetts asking about their arrangement with Ms. Chamulak. The Doucetts told the landlord that they had not seen Ms. Chamulak since signing the roommate agreement in April and they believed she was subletting the apartment to them.
15. On July 4, the landlord issued Ms. Chamulak a One Month Notice to End Tenancy for Cause. The landlord claimed Ms. Chamulak had allowed an unreasonable number of occupants in the unit and had assigned or sublet the rental unit without their permission. The next day, Ms. Chamulak assured the Doucetts that she would dispute the eviction notice and the earliest the eviction could take effect would be September or October after the Residential Tenancy Branch (RTB) hearing.
16. On July 6, Ms. Chamulak notified the Doucetts that their \$3,700 rent cheque for July had been returned that day and she asked them to e-transfer July's rent payment to her as soon as possible. That day, the Doucetts e-transferred Ms. Chamulak \$1,850 which was half of July's rent. They had previously paid all rent payments in two

separate e-transfer installments on separate days, because the \$3,700 rent amount exceeded their bank's daily e-transfer limit.

17. On July 6, at Ms. Chamulak's request, the Doucetts left one of their two sets of keys with the building's concierge because Ms. Chamulak had an upcoming meeting with her landlord at the condo. That same day the Doucetts told Ms. Chamulak about their unease with their living situation because of Ms. Chamulak's ongoing dispute with her landlord. Over the next few days, Ms. Chamulak spent some time at the condo. It is unclear whether she ever spent the night there.
18. Ms. Chamulak says that on July 7, her landlord entered the condo without permission. She phoned the police, who attended and met with the landlord in the building's lobby.
19. On July 8, Ms. Chamulak asked the Doucetts to pay the second half of their July rent and told them to reduce the amount by \$100. She did not explain why she reduced the rent amount. The Doucetts responded that they would not pay the remaining July rent owing until Ms. Chamulak returned the second set of keys to them and confirmed in writing that they would have the condo to themselves for the rest of July. They also said that they would be moving out because of the emotional strain Ms. Chamulak's ongoing dispute with her landlord had caused them. They said they would stay until July 31 and help her find a new roommate, leave the keys with the concierge, and discuss buying her furniture if she agreed to return their security deposit by August 1. Otherwise, they said they would not pay the remaining July rent owing and would move out on July 15.
20. On July 9, Ms. Chamulak texted the Doucetts, "Move out now. I will have your things removed." Devon Doucett responded, "Okay." Then Ms. Chamulak texted that if the Doucetts paid the \$1,850 owing for July rent as soon as possible, she would leave the condo that day for the remainder of the month, but she would not return the second set of keys. At 1:43 p.m. that day, Ms. Chamulak told the Doucetts she needed their decision by 2:30 p.m. that day. She said she would

consider using their damage deposit towards the balance of July's rent owing and they could stay until noon on July 31.

21. Ms. Chamulak says when she returned to the condo later in the afternoon on July 9, she realized the Doucetts had already moved out. The Doucetts dispute this. They say that after the police incident on July 7 they had taken some of their belongings and were staying elsewhere until Ms. Chamulak resolved her dispute with her landlord. They say they had not moved out permanently, and some of their belongings were still in the condo. On July 10 Ms. Chamulak allowed the Doucetts to return to the condo to pick up their remaining belongings. More on this below.
22. In an October 26, 2023 decision, the RTB granted the landlord an order of possession of the condo effective October 31, 2023 at 1:00 p.m. The RTB dismissed Ms. Chamulak's three separate applications to cancel the eviction notice for failing to serve them on the landlord. The RTB did not address whether the parties' roommate agreement was a sublease.

Does the CRT have jurisdiction to decide this dispute?

23. Although the parties did not expressly argue it, I considered whether the CRT has jurisdiction to decide this dispute. This is because, despite signing a roommate agreement, the applicants allege they had a verbal agreement with Ms. Chamulak that was more like a subletting arrangement than a roommate arrangement. Under the *Residential Tenancy Act* (RTA) section 84.1, the RTB has exclusive jurisdiction over residential tenancy disputes. This means the CRT cannot resolve disputes that the RTB can resolve under the RTA, which include sublease disputes.
24. The RTA defines a sublease agreement as a tenancy agreement where the tenant transfers their rights under an original tenancy agreement to a subtenant for a period shorter than the term of the original tenancy, and the subtenant agrees to vacate the unit on a specified date. The RTB's published *Residential Tenancy Policy Guideline 19. Assignment and Sublet* says that for a sublease to exist, the original tenant must retain an interest in the tenancy. It says that in the case of a

periodic tenancy, a sublease agreement must specify that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.

25. Under the parties' roommate agreement, Ms. Chamulak did not transfer her rights under her original tenancy agreement to the Doucetts. I also note that Ms. Chamulak's lease term with the landlord ended May 31 and continued month to month after that. The parties' roommate agreement was for a 6-month period from May 1 to October 31, after which the agreement would continue month to month if all roommates agreed. There is no indication the roommate agreement term would be shorter than Ms. Chamulak's lease term. Based on the wording of the roommate agreement, I find it does not meet the definition of "sublease" in the RTA.
26. The Doucetts say they had a verbal agreement with Ms. Chamulak that she would not actually live with them in the condo, and they would only pretend she did to avoid issues with her landlord. However, the Doucetts do not allege that their verbal agreement had a specified end date or that it was for a term shorter than the length of Ms. Chamulak's lease. Ms. Chamulak also denies there was such a verbal agreement. She says the parties agreed the Doucetts could use the entire condo space while she was out of town. However, she says the parties agreed to "accommodate each other's schedules" when she was in Vancouver.
27. I find it is not clear from the documentary evidence what the parties verbally agreed upon for the times that Ms. Chamulak would be in Vancouver. I also find the fact that the Doucetts gave Ms. Chamulak a set of keys and allowed her to spend time in the condo over several days in July supports Ms. Chamulak's version of the parties' verbal agreement. On the evidence before me, I find the Doucetts have failed to establish that they verbally agreed to have exclusive possession of the condo for the duration of their roommate agreement. So, I find the parties' arrangement is governed by the roommate agreement, and the CRT has jurisdiction to decide this dispute.

Did Ms. Chamulak evict the Doucetts or had they already moved out?

28. The Doucetts say Ms. Chamulak evicted them without notice on July 9. Ms. Chamulak does not dispute telling the Doucetts to move out immediately on July 9, but she says that by the time she did so, the Doucetts had already moved out. She says this was a breach of the roommate agreement, which required 30 days' notice.
29. In support of her position, Ms. Chamulak submitted a statement from her neighbour, JF. They said that on July 16 at 1:00 p.m. they dropped Ms. Chamulak off at her condo and it appeared that the Doucetts had vacated it. They said the Doucetts had removed all clothing, bedding, toiletries, shoes, coats, and all other personal items. Ms. Chamulak says the statement has the incorrect date, and JF dropped her off on July 9, not July 16. However, even if true, JF does not explain how he could have known which items in the condo belonged to the Doucetts or Ms. Chamulak. Ms. Chamulak's other evidence also contradicts this statement, because she undisputedly allowed the Doucetts to return on July 10 to retrieve their personal belongings that they had left behind, including dishes and bedding. For these reasons, I place no weight on JF's statement.
30. As noted above, the Doucetts say that after the police incident with the landlord on July 7, they decided to temporarily move some of their belongings out of the unit and stay with friends until the volatile situation between Ms. Chamulak and her landlord was resolved. They said they did not intend to permanently move out at that time. I find this is a reasonable explanation, and I find their text messages in evidence support their position. They show the Doucetts' intention to stay until either July 15 or July 31, and they also show that they left a significant amount of their belongings in the condo. I find the Doucetts had not moved out on July 9, and so I find Ms. Chamulak evicted the Doucetts on July 9.

Are the Doucetts entitled to a \$3,850 refund?

31. The Doucetts claim a \$1,850 refund for their July rent payment because Ms. Chamulak evicted them in early July. Ms. Chamulak says she is not required to

refund the Doucetts' rent payment because they failed to give 30 days' notice that they were moving out.

32. The text messages in evidence indicate that on July 8, before Ms. Chamulak evicted them, the Doucetts told her they intended to move out by July 15 or 31. This was less than 30 days' notice as required by the roommate agreement. On its face this is a breach of the roommate agreement. However, I find this was not a fundamental breach, because it did not deprive Ms. Chamulak of substantially the whole benefit of the agreement (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 SCR 426). This means that despite the Doucetts' breach, the agreement continued. However, I find Ms. Chamulak's eviction of the Doucetts on July 9 was a fundamental breach of the roommate agreement, as it made further performance of the agreement impossible (see *Bhullar v. Dhanani*, 2008 BCSC 1202). This means the Doucetts were entitled to end the agreement immediately and seek damages.
33. Having found the Doucetts lived in the condo until July 9, I find they are entitled to a refund for July 9 to 15, which equals \$835.48.
34. The Doucetts also claim \$2,000 as the return of their security deposit. The roommate agreement says the security deposit would "be refunded (with interest) on move out and a property inspection shows there has been no damage or theft to the condo or the contents (furniture, electronics, etc.)".
35. Ms. Chamulak does not allege that the Doucetts damaged the condo or stole any of her belongings from it, and there is no evidence they did so. Rather, Ms. Chamulak says she used the deposit to cover the \$1,850 the Doucetts owed her for the second half of July's rent. She does not explain why she kept the additional \$150, though she claims she spent over \$300 on cleaners. However, she provided no evidence of any cleaning costs she incurred.
36. Having found Ms. Chamulak fundamentally breached the roommate agreement by evicting the Doucetts without notice on July 9, I find she is not entitled to rent for the

second half of July. Even if she was, the roommate agreement does not specifically allow Ms. Chamulak to use the security deposit towards unpaid rent. I find that a plain reading of the security deposit clause required Ms. Chamulak to return the Doucett's deposit when they moved out if there was no damage or theft to the condo or its contents, which there was not. So, I find Ms. Chamulak must return the Doucett's \$2,000 security deposit.

37. The *Court Order Interest Act* applies to the CRT. The Doucetts entitled to pre-judgment interest on the \$2,835.48 owing calculated from July 9, 2023, which is the date Ms. Chamulak evicted the Doucetts, to the date of this decision. This equals \$218.12.
38. 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. Since the Doucetts were generally successful, I find they are entitled to reimbursement of the \$175 they paid in CRT fees. None of the parties claimed any dispute-related expenses.

ORDERS

39. Within 14 days of the date of this order, I order Ms. Chamulak to pay the Doucetts a total of \$3,228.60, broken down as follows:
 - a. \$2,835.48 as a refund of the security deposit and pro-rated rent,
 - b. \$218.12 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
40. The Doucetts are entitled to post-judgment interest, as applicable.

41. 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.

Sarah Orr, Tribunal Member