



Civil Resolution Tribunal

Date Issued: March 21, 2025

File: SC-2024-005226

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lyu v. Muller*, 2025 BCCRT 365

B E T W E E N :

HE LYU

APPLICANT

A N D :

ANDREW MULLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a roommate dispute.
2. He Lyu rented a room in a townhouse owned by Andrew Muller. Ms. Lyu says Mr. Muller evicted her with one day's notice and did not reimburse her \$400 deposit.

She claims \$400 for the deposit and \$800 for one month's rent. Ms. Lyu also says Mr. Muller caused her "emotional damage", and she claims \$3,800 for that.

3. Mr. Muller says he evicted Ms. Lyu under the terms of the parties' contract.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. These are the CRT's formal written reasons.
6. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find 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 an oral hearing is not necessary in the interests of justice.
7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.
8. Where permitted by CRTA section 118, 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.

Residential Tenancy Act

9. The CRT 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 does not apply to living accommodation where a tenant shares a kitchen or a bathroom with the owner.

10. Ms. Lyu filed an application for dispute resolution of this matter at the RTB. The RTB arbitrator declined jurisdiction to decide it. They found that though Ms. Lyu moved into Mr. Muller's townhouse before Mr. Muller, and the parties never lived there at the same time, they shared the kitchen. The arbitrator reasoned that since Mr. Muller was renovating both his bedroom and the kitchen, the parties shared the kitchen despite Mr. Muller using it for a purpose other than cooking.
11. I am not bound by the arbitrator's decision. However, I come to the same conclusion for a different reason. I find that while the parties did not live together in the townhouse during the brief period Ms. Lyu was there, it was clear they would share the kitchen once Mr. Muller moved in, since the townhouse had four bedrooms and one kitchen. I note Ms. Lyu refers to the "shared kitchen" in her submissions. So, I find the parties shared a kitchen, which brings this dispute within the CRT's small claims jurisdiction over debt and damages under CRTA section 118.

ISSUES

12. The issues in this dispute are:
 - a. Is Ms. Lyu entitled to \$800 for her rent and \$400 for her deposit?
 - b. Is Ms. Lyu entitled to \$3,800 for "emotional damage"?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Ms. Lyu must prove her claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but only refer to information I find relevant to explain my decision.

14. The parties lived together in a rental house before this dispute arose. Mr. Muller then bought the townhouse. In November 2023, the parties agreed Ms. Lyu would move into the townhouse on December 2, 2023, which she did. At that time, she was the only person living in the townhouse.
15. Shortly after Ms. Lyu moved in, the parties' relationship broke down, and Ms. Lyu gave Mr. Muller notice that she would move out by January 31, 2024. The situation continued to deteriorate, and Mr. Muller evicted Ms. Lyu on December 14, 2023 by changing the townhouse's locks.

The parties' contract

16. Ms. Lyu says Mr. Muller improperly evicted her after she complained about the townhouse. In response, Mr. Muller says the parties' contract allowed him to evict Ms. Lyu and keep both her deposit and her December rent. Mr. Muller relies on a written contract that only he signed in support of his position. Ms. Lyu says since she did not sign the contract, it does not bind her.
17. The principles of contract formation require that there be offer and acceptance between the parties, with the intention of creating a legal relationship, and the exchange of consideration (something of value).¹ The intention to create a legal relationship, or "meeting of the minds", is objective, and the fact that a contract is not signed does not change its binding nature. Rather, the parties must indicate to the outside world, in the eyes of a reasonable bystander, that they mean to be bound by the contract in question.²
18. In addition, a court (and the CRT) is not confined to the "four corners of the agreement" when assessing the parties' intention, but can consider all the circumstances or all the material facts.³ These can include the parties' conduct

¹ *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, [2021] 1 SCR 868, at paragraph 35

² See, for example, *Salminen v. Garvie*, 2011 BCSC 339 at paragraph 21, and *Skycope Technologies Inc. v. Jia*, 2023 BCSC 1288 at paragraph 89

³ *Leemhuis v. Kardash Plumbing Ltd.*, 2020 BCCA 99 at paragraph 17

before and after the contract was made, and evidence of any past agreements between them.⁴

19. Here, Mr. Muller submitted copies of written contracts for both the townhouse and the rental house the parties previously shared. As with the townhouse contract, only Mr. Muller signed the rental house contract. In submissions, Ms. Lyu seems to acknowledge it governed the parties' earlier living arrangements. The two contracts' terms are substantially the same, including the termination clause, which gave Mr. Muller "sole judgment on a case-by-case basis" to terminate a roommate's residency. The termination clause also provided that a roommate forfeited their damage deposit and rent if Mr. Muller terminated their residency.
20. I considered whether Ms. Lyu's past conduct in not signing the rental house contract while appearing to be bound by it was sufficient to find that the parties intended to be bound by the townhouse contract she also did not sign. I concluded it was not for the following reason.
21. Though both contracts included the same unusual termination clause, the clause was never tested under the rental house contract. Had it become relevant, I find the clause was onerous enough that Ms. Lyu would likely have objected in the same way she does now, namely that she did not sign the rental house contract, and so was not bound by it. In these circumstances, I find the fact that Ms. Lyu did not sign the rental house contract unhelpful in establishing the parties' intention to be bound by the townhouse contract that she also did not sign.
22. Further, I find that from a reasonable bystander's perspective, there is nothing else to prove the parties intended to be bound by the townhouse contract Ms. Lyu did not sign. On the evidence before me, I find the terms Ms. Lyu and Mr. Muller agreed on for the townhouse were that Ms. Lyu would pay \$800 a month for rent, including laundry access, internet, and a lock on the bedroom door, and a \$400 deposit.

⁴ *Angus v. CDRW Holdings Ltd.*, 2022 BCSC 1001 at paragraphs 7 and 13

Is Ms. Lyu entitled to \$800 for her rent and \$400 for her deposit?

23. As noted above, the parties' relationship broke down not long after Ms. Lyu moved into the townhouse.
24. Facebook messages in evidence show Ms. Lyu was unhappy because the Wi-Fi was not working, there was no access to the laundry, and her bedroom door did not have a lock. On December 5, 2023, Ms. Lyu gave Mr. Muller notice of her intention to move out by the end of January 2024.
25. On December 13, 2023, Ms. Lyu raised concerns about painting Mr. Muller was having done in the kitchen and his bedroom. She said she would report the situation to the health authority. Mr. Muller responded by telling Ms. Lyu she could a) stay until January 31, 2024, if she agreed not to interact with him anymore, or b) move out within 24 hours and receive a refund of her deposit if she did not "cause trouble". Ms. Lyu said she would involve the police if Mr. Muller locked her out. Mr. Muller changed the locks on December 14, 2023, and said Ms. Lyu could collect her possessions on December 15, 2023.
26. In other CRT decisions, tribunal members have found that roommate agreements include an implied quiet enjoyment term, and an implied term that the parties will treat each other respectfully and not engage in behaviour that makes the other feel unsafe.⁵ Previous CRT decisions are not binding on me, but I agree with that reasoning, and I find such terms were implied in the parties' townhouse contract. I also find there was an implied term that each party would give the other reasonable notice to end the contract.
27. In his messages to Ms. Lyu, Mr. Muller said he found her communications negative, abusive, and hostile. While Ms. Lyu complained about the townhouse, I do not consider that the language or tone of her communications violated the implied quiet enjoyment term, or the term requiring the parties to treat each other respectfully. Mr.

⁵ See, for example, *Solimani v. Wong-Moon*, 2021 BCCRT 1014, *Nowicki v. Gobrecht*, 2020 BCCRT 1417, *Wells v. Stetsko*, 2021 BCCRT 545, and *Ahn v. Hsu*, 2021 BCCRT 974

Muller did not indicate he felt unsafe or threatened by Ms. Lyu. Overall, I find Ms. Lyu did not breach the townhouse contract.

28. That means Mr. Muller was required to give Ms. Lyu reasonable notice to end the contract. I find neither of Mr. Muller's options constituted reasonable notice. Specifically, I find it was unreasonable of Mr. Muller to allow Ms. Lyu to stay only on the condition that the parties no longer interacted, especially since Mr. Muller owned the townhouse. I also find 24 hours to move out was unreasonable. It follows that Mr. Muller breached the townhouse contract by failing to give Ms. Lyu reasonable notice to end it.
29. I turn to the question of damages. Ms. Lyu claims \$800 for her December rent. However, Mr. Muller only breached the contract on December 14, 2023. So, I find Ms. Lyu is entitled to a refund of her rent for the remainder of that month, which is \$480 (\$800 / 30 days x 18 days).
30. As for the deposit, it is unclear whether it was a security deposit, which is commonly understood to cover damage beyond normal wear and tear, unpaid rent, or other financial obligations under an agreement, or a damage deposit, which only covers damage that goes beyond normal wear and tear. But I find it does not matter. To keep the deposit, Mr. Muller must prove he is entitled to it.⁶ I find he has not proven he kept the deposit to cover damage beyond wear and tear, unpaid rent, or other financial obligations. For the reasons above, the termination clause provisions do not apply. So, I order Mr. Muller to reimburse Ms. Lyu for the \$400 deposit.

Is Ms. Lyu entitled to \$3,800 for “emotional damage”?

31. Finally, Ms. Lyu claims \$3,800 for “emotional damage” she says Mr. Muller caused her by painting and evicting her on 24 hours' notice. In *Lau v. Royal Bank of Canada*, the court found there must be some evidentiary basis for awarding damages for mental distress. I find the same applies Ms. Lyu's claim about

⁶ See *Griffin Holding Corporation v. Raydon Rentals Ltd.*, 2016 BCSC 2013 at paragraph 28, and *Buckerfields v. Abbotsford Tractor and Equipment*, 2017 BCPC 185 at paragraph 5

emotional damage. Ms. Lyu did not provide any independent or documentary evidence to support her claim, so I find it unproven, and I dismiss it.

INTEREST, CRT FEES, AND DISPUTE-RELATED EXPENSES

32. The *Court Order Interest Act* applies to the CRT. Ms. Lyu is entitled to pre-judgment interest on the \$880 damages award from December 14, 2023, the date Mr. Muller breached the parties' contract, to the date of this decision. This equals \$53.58.
33. 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. As she was partly successful, Ms. Lyu is entitled to reimbursement of \$87.50 for half her CRT fees. She did not claim any dispute-related expenses.

ORDERS

34. Within 30 days of the date of this decision, I order Mr. Muller to pay Ms. Lyu a total of \$1,021.08, broken down as follows:
- a. \$880 in damages,
 - b. \$53.58 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
35. Ms. Lyu is entitled to post-judgment interest, as applicable.
36. I dismiss Ms. Lyu's remaining claims.

37. 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.

Megan Stewart, Tribunal Member