



Civil Resolution Tribunal

Date Issued: May 23, 2025

File: SC-2023-012002

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Carey v. Spence-Lees*, 2025 BCCRT 681

B E T W E E N :

AISLINN CAREY

APPLICANT

A N D :

ELISHA SPENCE-LEES

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, Aislinn Carley, rented a room in a house from the respondent, Elisha Spence-Lees. The applicant says the respondent failed to return her deposit when the applicant moved out. The applicant claims \$445 for the deposit.
2. The respondent agrees that the applicant paid a \$445 deposit. The respondent says she is entitled to keep the deposit because the applicant damaged the bedroom

wall, owed the respondent money for utility bills, left behind numerous personal items, and left the property unclean. The respondent also says the applicant sold a TV table that the respondent owned.

3. The parties are each self-represented in this dispute.
4. For the reasons set out below, I dismiss the applicant's claim.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims 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 under the *Residential Tenancy Act* (RTA). However, the RTA does not apply to roommate situations, like this one.
6. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
7. The CRT conducts most hearings by written submissions, but it has discretion to decide the hearing's format, including by telephone or videoconference. Here, I find I can properly assess and weigh the documentary evidence and submissions before me. 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.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
9. 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.

10. The applicant provided late evidence in this dispute, after the CRT's evidence deadline had passed. The respondent objected, stating that it would be unfair to accept late evidence. However, I find the evidence is relevant to the dispute, and the respondent had the opportunity to respond to it, which she did. So, I find it is procedurally fair to admit the late evidence. In any event, I find the late evidence does not change the outcome of this dispute.

ISSUE

11. Must the respondent refund the applicant's \$445 damage deposit?

EVIDENCE AND ANALYSIS

12. In this civil dispute, the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions, but refer only to what is necessary to explain my decision.
13. As a preliminary matter, the applicant says the respondent overcharged her for the damage deposit. The applicant says her monthly rent was \$750, and under the RTA the deposit cannot be more than 50% of rent.
14. The RTA does not apply to this roommate situation. Also, the parties had no written contract incorporating any RTA provisions. So, the parties were not bound by any RTA limit to the damage deposit amount. I also note that the applicant discussed the deposit amount with the respondent in a text message exchange before she moved in. In that exchange, the applicant asked why the deposit was more than 50% of the rent, and the respondent said the extra amount was for the furnishings. So, I find the parties contractually agreed to the \$445 deposit.
15. The applicant also says the respondent had no authority under the RTA to collect a deposit, as the respondent was not the landlord of the house, but was instead a tenant who sublet to roommates. Again, the RTA does not apply to this dispute, so I find the applicant is not entitled to a deposit refund on this basis.

16. Finally, the applicant suggests the respondent might not have held the deposit, but instead may have forwarded it to the landlord who owned the house. If this is true, then the applicant's claim for refund of the deposit should be against the landlord. The landlord is not a party to this dispute, so I make no findings about that.
17. As noted above, the respondent says the applicant is not entitled to any deposit refund because she damaged the bedroom wall, owed money for utility bills, left personal items behind, left dirty dishes in the kitchen, and sold the respondent's TV table.
18. The applicant denies all these claims. I address them in turn below.

Bedroom Wall

19. The respondent says the bedroom walls were not damaged when the applicant moved in. She says the applicant damaged one wall and also left pictures and stickers stuck to the wall.
20. The applicant says the bedroom walls already had numerous markings and scuffs when she moved in. She admits that she removed a "small amount of paint" when she took down her pictures. The applicant says this paint damage was "minor and easily fixable."
21. Based on the evidence before me, I find the applicant significantly damaged the bedroom wall. The respondent provided a copy of an advertisement from when the applicant rented the room, including photos showing intact walls with no damage. The applicant provided no other photos to prove her assertion that the walls had pre-existing damage.
22. The applicant provided a text message from when she moved in, asking for permission to repaint. The respondent replied that they were not permitted to paint. The applicant says this text exchange proves that the walls were already damaged, but I do not agree. Instead, I find that if the walls were damaged, the applicant would have mentioned this when she asked to paint.

23. For these reasons, I find the applicant has not proved that the walls were damaged when she moved in.
24. The respondent also provided photos of the wall after the applicant moved out. The first photo shows that the applicant left 6 pictures mounted on the wall. The photo also shows a significant amount of adhesive material stuck to other areas of the wall, and areas where the drywall had dents. In one area, the drywall's surface layer was torn off.
25. Finally, the respondent provided photos showing that after she removed the pictures the applicant left behind, there was more drywall damage caused by the adhesive used to mount the pictures.
26. Based on this evidence, I do not agree that the wall damage was minor or easily fixable. The respondent provided a copy of a contractor's estimate of \$450 to repair the wall. The evidence shows the respondent sent the photos to the contractor, and the contractor's estimate was based on the photos. The contractor wrote that the work involved removing the remaining sticker adhesive, fixing the wall dents, sanding the wall, and repainting it.
27. The applicant says the \$450 estimate was unreasonable, but I disagree. I find the contractor's estimate was based on an assessment of the photos, and included the work necessary to remove the adhesive and repair and repaint the wall. The applicant provided no contrary estimate. Also, it was open to the applicant to do the work herself before moving out, but she chose not to.
28. Finally, the applicant says that under the RTA, the respondent was required to address repairs within 15 days of the applicant's move-out date. Again, the RTA does not apply to this dispute. So, I am not persuaded by that argument.
29. In summary, I accept that the wall repairs were worth \$450, which is above the applicant's \$445 deposit. On this basis alone, the applicant's claim fails. However, given that the parties provided lengthy submissions, I have addressed some other matters below.

Utility Bills

30. The respondent says the applicant owed \$57.55 for her portion of the shared bills for gas and electricity.
31. The applicant does not say she paid for all utilities owed. Rather, she says the respondent's utility bill management was "opaque", and the respondent did not provide the final amounts owed in a timely manner as required under the RTA.
32. As previously noted, the RTA does not apply in this dispute. The parties also had no written contract requiring that the respondent provide the bill amounts within a particular time period. So, I find the applicant is still responsible for for her portion of the utilities.
33. The parties disagree about the amount owed. The applicant says \$75 would be a fair amount for utilities, so I accept that submission. So, I find it was reasonable for the respondent to withhold \$75 from the deposit to cover unpaid utilities.
34. Since the respondent did not file a counterclaim, I order no repayment. However, for the reasons set out above, I find the respondent was entitled to keep the \$445 deposit. For this reason, I find it is not necessary to address the respondent's allegation that the applicant left dishes unwashed in the shared kitchen and sold the respondent's TV table.
35. However, I note that the text messages in evidence clearly show that the applicant admitted to leaving personal items behind in her former room and on the property after she moved out. These items included a car battery, furniture, and cosmetics. The applicant says that other house occupants and the respondent agreed to take or move these items for her, and provided text message evidence of these conversations. For example, the applicant texted roommate C, stating that she "was running around like a headless chicken all morning long." The applicant wrote that she brought as much as she could downstairs from her room, and "wanted to do more but was absolutely wrecked this morning."

36. Similarly, in a text to V, the applicant wrote, “I’m just gonna leave everything upstairs. Maybe you could help the new girl bring it all down please... Sorry there was way too much to do this morning.”
37. Finally, after she moved out, the applicant texted the respondent and asked her to bring the applicant’s car battery outside so a buyer could pick it up.
38. I find that it was unreasonable for the applicant to simply leave her personal items behind, to be moved or discarded by others. If others agreed to take or buy the applicant’s items, the applicant was obligated to move the items to their final location before she left. This supports the conclusion that the applicant is not entitled to any deposit refund.
39. For these reasons, I dismiss the applicant’s claim.
40. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss his claim for reimbursement of CRT fees. The respondent is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I order no reimbursement.

ORDER

41. I dismiss the applicant’s claims.

Kate Campbell, Vice Chair