



Civil Resolution Tribunal

Date Issued: June 5, 2025

File: SC-2023-013081

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MK v. DW*, 2025 BCCRT 763

B E T W E E N :

MK

APPLICANT

A N D :

DW and EF

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Peter Nyhuus

INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant, MK, rented two rooms in a house leased by the respondents, DW and EF. MK says the respondents wrongfully evicted her and her 8-year-old child without reasonable notice when she became pregnant with DW's child. She also

says the respondents did not give her reasonable access to pack her belongings, damaged her belongings when they packed for her, and kept certain belongings. She claims the value of the missing and damaged items, which she estimates to be about \$10,000, and seeks an order for the return of certain items. However, she limits her claim to \$5,000, the Civil Resolution Tribunal's (CRT) small claims monetary limit.

3. The respondents deny wrongfully evicting MK, or damaging or keeping her belongings. They say they acted fairly and reasonably in the circumstances. They ask me to dismiss MK's claims.
4. MK represents herself, however a non-lawyer friend represented her at an earlier stage of this dispute. The respondents represent themselves.
5. On my own initiative, I have anonymized the parties' identities in the published version of this decision, to protect the identity of MK's non-party minor child.

JURISDICTION AND PROCEDURE

6. The 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.
7. 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. The parties in this dispute each question the other's credibility (truthfulness) about what occurred. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required when credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, the parties provided their recollections and numerous items of

evidence, including their roommate agreement, audio recordings, witness statements, and text message exchanges. No party requested an oral hearing, and I find it unlikely that cross-examination would reveal inconsistencies in any party's evidence. For these reasons, I find the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

8. CRTA section 42 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.

Preliminary Issues

Jurisdictional Issues

9. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. I considered whether the CRT has jurisdiction over this claim, given that it involves issues of residential tenancy and alleged discrimination.
10. 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.
11. I note that MK says her eviction was discriminatory and directly linked to her pregnancy. Despite this allegation, MK does not request any specific remedies related to the *Human Rights Code*. So, bearing in mind that CRTA section 11(1)(d) says the CRT may refuse to resolve a claim or dispute where it involves the application of the *Human Rights Code*, I make no findings about its application to the facts of this dispute.
12. In summary, I find this dispute is limited to an alleged breach of the parties' roommate agreement and the respondents' treatment of MK's personal property.

For this reason, I find this dispute falls within the CRT's small claims jurisdiction, as set out in CRTA section 118.

Unopenable Evidence

13. I was unable to open 7 items of evidence submitted by MK. However, I determined that MK submitted other items of openable evidence that share the same file name as these documents. MK says in her reply submissions that she included duplicates of evidence and tried to delete some of these duplicates. I find it likely that the unopenable evidence items were duplicates of openable evidence. For this reason, and in the interest of avoiding delays, I decided not to ask MK to resubmit this evidence.

Recorded Conversations

14. MK provided various recorded conversations between herself and DW, and between third parties and DW. The respondents say they were not aware these conversations were being recorded. They say this raises concerns about their admissibility and relevance and request that I consider this when reviewing MK's submissions.
15. However, despite these concerns, the respondents point to parts of the audio recordings in their submissions for support of their side of the story.
16. Secret recordings may be admitted as evidence if they are relevant, the parties are accurately identified, the recordings are trustworthy, and the probative value of the recordings outweighs any prejudicial effect.¹ Further, I note that it is legal in BC for one party to record a conversation even if the other party is not aware of the recording, and that the CRT has accepted such recordings in evidence in other disputes.²

¹ See: *Finch v. Finch*, 2014 BCSC 653, as cited in *KWK v. VLC*, 2022 BCSC 1321

² See: *Dill v. Greater Vancouver Gutters Inc.*, 2018 BCCRT 58

17. I find the recordings are generally trustworthy, reliably showing what was said between the parties. Further, since both parties have asked me to listen to and consider different parts of the recordings, I have done so. While I accept the recordings as evidence, I generally give them little weight since MK had the advantage of knowing she was being recorded while the respondents did not. Most of my findings are based on the documentary evidence and the parties' submissions rather than these recordings.

ISSUES

18. The issues in this dispute are:

- a. Did the respondents wrongfully evict MK by not providing reasonable notice?
- b. Did the respondents damage MK's belongings?
- c. Did the respondents fail to return MK's belongings?

EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, MK must prove her claims on a balance of probabilities. This means "more likely than not".

20. I will make a general comment about MK's evidence. MK provided 393 items of evidence, which is far more than typical for a small claims dispute. Her evidence includes hundreds of text messages with the respondents and various other third parties, and hours of recorded conversations. I find much of MK's evidence is aimed at showing the complicated nature and power dynamics of the parties' intimate relationship. However, I do not find the parties' relationship dynamics to be central to this dispute. So, I will only explain the parties' relationship to the extent necessary to answer the legal issues applicable to MK's eviction and her lost and damaged belongings. For this reason, the parties will notice that I do not mention all the evidence the parties provided. While I have reviewed it all, I refer only to the argument and evidence that I find necessary to explain my decision.

21. I note that DW and EF responded to this dispute together, relying on the same submissions and evidence.

Background

22. From May 2021 to June 2022, MK and her child lived with the respondents at a house the respondents were leasing from third party owners.
23. MK says this living situation was going well until June 2022, when she found out she was pregnant. On June 17, she broke this news to the respondents. She says this caused a “dramatic shift in the dynamics of the household” and that the respondents became hostile towards her.
24. I find the dynamics likely shifted at this point because MK said she was pregnant with DW’s child. DW was in a 15-year relationship with EF. The respondents say they were not interested in welcoming MK into this relationship, and that she made repeated and unwelcomed attempts to convince them they were in a three-way relationship.
25. After telling the respondents about her pregnancy, MK says she decided to stay at a friend’s house temporarily to allow things to cool down. On June 21, MK texted DW to ask if she could come by the house the next day to talk. DW replied, “hell no”. On June 23, MK texted DW again to say that she would be coming home in a few days. However, the next morning, DW texted MK, “You are moving out.”
26. MK says she returned to the house on June 27 to collect her belongings. While at the house, she says that EF “physically confronted” her. She says she reported an assault to the police and that after this confrontation she determined it was not safe to return to the house.
27. I note that the respondents deny that EF assaulted MK, although they acknowledge that she “swung at the air in frustration” after MK “verbally harassed” her.
28. On July 1, MK sent an \$800 e-transfer to EF for July’s rent. However, EF declined to accept the transaction and included a message, “You have been told to leave.”

29. On July 10, MK says she received an official eviction notice from DW, informing her that she had to vacate the property immediately and granting her until August 15 to remove her belongings. I note that the eviction notice is not in evidence, however, the respondents agree they gave her until August 15 to remove her belongings.
30. On July 19, MK says she attempted to retrieve her belongings, but that she was followed around the property by DW. The respondents say that MK brought DW's ex-girlfriend to the house to try to aggravate the situation further.
31. Around this time, the respondents say they installed a new lock on the front door. They say they did this because MK stole one of DW's microphones while packing. MK admits to having DW's microphone, although she denies stealing it. In one of the voice recordings, she says she is holding it as "collateral". I will return to this issue.
32. MK says she had a miscarriage in early August.
33. On August 15, MK says she arrived at the house with a crew of friends to pack up and remove the rest of her belongings. She says the respondents had thrown most of her belongings onto the lawn and that DW denied her entry into the house to check for any remaining items. The respondents do not dispute this.

Did the respondents wrongfully evict MK by not providing reasonable notice?

34. MK says the respondents breached the parties' roommate agreement by evicting her without reasonable notice.
35. MK provided a one-page document titled Roommate Agreement. The agreement is not signed by the parties, but the respondents do not dispute that it governed their arrangement. Under the agreement, MK agreed to pay \$800 per month for two private rooms and shared use of common spaces. MK was not required to pay a damage deposit.

36. The agreement's term began on May 1, 2021, and did not include an end date. It says that MK must provide at least one month's notice before ending the tenancy, but does not state an equivalent notice requirement for the respondents. However, contracts may have implied terms, which are terms the parties did not consider or discuss, but are based on the parties' presumed intentions. Here, I find the parties intended for the termination rights and notice periods to be the same for both parties. So, one month. This is consistent with previous CRT decisions which have found roommate agreements include an implied reasonable notice period of one month.³
37. I find the respondents evicted MK on June 17, after learning she was pregnant with DW's child. I find it clear from DW's texts that MK was no longer welcome in the house after this date. So, the respondents did not provide MK the one month of notice that she was entitled to.
38. I note that the respondents say they evicted MK because of her behaviour. In addition to her alleged attempts to convince the respondents to enter a three-way relationship, the respondents list several other behaviours they say justify MK's sudden eviction. I find these other alleged behaviours are largely unproven, so I do not discuss them.
39. MK has not provided evidence of monetary damages related to her eviction. Her claim for damages is instead focused on the respondents' treatment of her belongings. So, while I find the respondents breached the contract's implied notice requirement, I do not award damages, as I find MK has not claimed or proven any.

Did the respondents damage MK's belongings?

40. MK says that the respondents packed her belongings without her consent and damaged certain items. The respondents deny damaging her belongings. They say that MK chose not to take responsibility for packing, leaving the task to them. They

³ See: *Anderson v. Kuzmick*, 2023 BCCRT 106 and *Phillips v. Roberts*, 2021 BCCRT 109.

say they made efforts to handle her items carefully, and that any issues with the condition of her belongings are not a result of neglect or malice.

41. On July 10, I find the parties agreed that MK would have until August 15 to remove her belongings from the house. On August 15, MK showed up at the house ready to do exactly that.
42. Further, MK provided text messages showing that she had asked DW not to handle her belongings. I find the respondents breached the terms of their move-out agreement by handling MK's possessions prior to the deadline without MK's permission. So, I find they are liable for any damages they caused to her possessions.
43. After moving out, MK's friend, HH, helped her unpack her things. MK provided HH's signed witness statement. HH says she found the way in which MK's items were packed to be incredibly upsetting. For instance, she says there were open items of moldy food mixed in the same box as clothing and bedding. She also says that fine China wine glasses were wrapped in tortillas and that MK's son's clothes were covered in cat urine.
44. MK says 3 items were damaged: a computer monitor, a red sectional couch, and a music box. I review each in turn.
45. MK and HH say the respondents packed her son's computer monitor without any padding, which caused damage to the screen. MK provided a video showing damage to the screen. I find the respondents negligently packed the monitor and are responsible for the screen's replacement. She claims \$50, which I find to be reasonable.
46. MK provided a picture of her red sectional couch piled on the front lawn. She also provided a video showing what appears to be burn holes in the fabric. I find it likely the respondents caused this damage. MK provided two screenshots of similar sectional couches ranging between \$1,080 and \$1,649. She claims \$1,000 to replace this couch, which is slightly less than this price range. Given that the couch

appears used in the video, and bearing in mind the principle of betterment (which I explain further below), I find \$900 to be reasonable.

47. MK says the respondents packed her grandmother's music box in a manner that caused it to break. While MK did not provide a picture of the broken music box, HH's statement supports her claim. Further, based on pictures of the respondents' packing job, I find they likely damaged it. MK says this item was very important to her. She lists it as "priceless".

48. An award of damages generally does not take sentimental value into account, except in special circumstances, such as where there is a deliberate act of wrongdoing.⁴ Here, I find the respondents deliberately packed her belongings in a manner that was intended to cause hardship to MK, so I find it appropriate to take sentimental value into account in assessing a damages award. I find it reasonable to award her \$200 for the damaged music box.

49. In summary, I find MK has proven the respondents caused damage to her belongings and I order the respondents to pay her \$1,150 in damages.

Did the respondents fail to return any of MK's belongings?

50. MK says that the respondents did not allow her to collect all her belongings. The respondents admit they did not give her access to the house on August 15 to look for any remaining items.

51. On November 2, 2022, MK texted and e-mailed the respondents requesting the return of various items. This request initiated a very heated exchange of texts between MK and DW about their possessions.

52. DW claims that MK stole a \$600 microphone while picking up her things during one of her visits to the house. At one point, DW admitted to intentionally keeping 2 items. He also threatened to "sell that shit off" if MK did not return the microphone.

⁴ See: *Lepage v Bowen Island Municipality*, 2021 BCSC 1077, at paragraphs 28 to 29

53. Based on MK and DW's text exchange, I find both parties were keeping the other's property as "collateral". Essentially, they were in a stand-off, each refusing to return the other's property unless the other did so.
54. Based on these texts and DW's refusal to let MK into the house to search for these items on the move-out day, I find it likely the respondents still have many of MK's items.
55. In this case, I find both parties have committed the tort (legal wrong) of detinue. Detinue is the continuous wrongful detention of personal property, with the general remedy being the asset's return or market value damages.⁵ For a party to establish detinue, they must prove:
- a. The items are specific personal property.
 - b. They have a possessory interest in the item.
 - c. They made a proper demand for the item.
 - d. The other party refused to return the item, without lawful excuse.⁶
56. I first review MK's claim for detinue, then turn to DW's claim for a set-off for the microphone.
57. I find MK has proven she had a possessory interest in the items listed below, that she properly demanded their return, and that the respondents refused to return the items, without lawful excuse. MK also provided evidence of each item's replacement value, which I have included next to each item. These are the items I find the respondents wrongfully detained:
- a. Yamaha mixer (\$519)
 - b. Akai midi keyboard (\$500)

⁵ See: *685946 B.C. Ltd. v. 0773907 B.C. Ltd.*, 2024 BCSC 997 at paragraph 93

⁶ *Welander Estate v. Hayton*, 2022 BCSC 1941 at paragraphs 24-26.

- c. 3 mic stands (\$360)
- d. Yamaha effect rack (\$300)
- e. 3 fur coats (\$250)
- f. Knife (\$137)
- g. 2 hammocks (\$110)
- h. Audio Technica headphones (\$90)
- i. 2 cat hair brushes (\$60)
- j. Spice rack (\$50)
- k. Joking Hazard board game (\$40)
- l. Music book (\$35)

58. I note that I do not award damages for a drum stool, as I find MK likely gave this item to DW as a gift, which is a lawful excuse for keeping it.
59. Further, I do not award damages for MK's missing violin and oboe. The respondents say they first heard of these items in this CRT dispute. Further, MK did not demand the return of these items in her November 2, 2022, email to the respondents. Given their sentimental value, I find it very likely MK would not have forgotten to mention these items if she believed they were at the respondents' house. I find the same logic applies to her missing recorders. She did not demand their return, so I find she has not proven detainment.
60. In summary, I find MK has proven the tort of detainment for the above-listed items and has proven their reasonable replacement value. However, I note that there is little evidence to support the condition of MK's items at the time of her loss. I considered the legal principle of betterment, which arises when ordering the full cost of replacing an item would provide a person with an item of greater value than what existed before the breach. In the circumstances, I find an appropriate deduction for

betterment is 10% of the damaged items' replacement cost, recognizing that discounting to avoid betterment is by its nature imprecise.⁷

61. I note that MK says in her submissions that she is requesting the return of certain missing items. The remedy for detinue is either the return of the property or damages. The BC Supreme Court has found that damages are appropriate where the property consists of "ordinary items of commerce" (something that can be easily replaced).⁸ I find monetary damages are appropriate here since all the items listed above can be easily replaced. While she says the oboe and violin carry sentimental value, I find she has not proven that the respondents have these items.
62. So, including the 10% deduction for betterment, I find the respondents must pay her \$2,287 in damages for the wrongfully detained items, subject to any set-off for DW's microphone.
63. While the respondents did not file a counterclaim, I find it is appropriate to set off the value of the microphone MK kept against this award. In the voice recordings and in the text message, DW repeatedly calls the microphone his "\$600 microphone". While he has not provided evidence of its price, I find it likely true that this was its purchase price, and MK does not dispute it. So, I find MK's award should be deducted by \$600, less a 10% deduction for betterment, so \$540.

Conclusion

64. In summary, I find the respondents must pay MK \$2,897 in damages, broken down as follows:
 - a. \$1,150 for damaging her belongings while packing for her, and
 - b. \$1,747 for wrongfully detaining her property, including the \$540 set-off.

⁷ See *Fudge v. Owners, Strata Plan NW 2636*, 2012, BCPC 409 at paragraph 92

⁸ *P.S. Sidhu Trucking Ltd. v Elima Enterprises Ltd.*, 2020 BCSC 1062 at paragraph 131.

65. The *Court Order Interest Act* applies to the CRT. However, MK waived her right to interest, so I order none.

66. 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. MK was successful, however she did not pay any CRT fees or claim dispute-related expenses. So, I order none.

ORDERS

67. Within 30 days of the date of this decision, I order the respondents to pay MK \$2,897 in damages.

68. MK is entitled to post-judgment interest, as applicable.

69. 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.

Peter Nyhuus, Tribunal Member