



Civil Resolution Tribunal

Date Issued: June 9, 2025

File: SC-2024-003126

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tomiczkova v. Callaghan*, 2025 BCCRT 777

B E T W E E N :

INGRID TOMICZKOVA

APPLICANT

A N D :

JENNIFER CALLAGHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Ingrid Tomiczkova, rented a room from the respondent, Jennifer Callaghan, in a roommate situation. The respondent asked the applicant to leave on short notice. The applicant agreed, and the respondent later refused to refund the applicant's \$700 deposit. The applicant claims that \$700 here. The respondent says

they were entitled to keep the deposit because they did not find a replacement roommate and missed out on a month's rent.

2. Each party is self-represented. As I explain below, I find the respondent was not entitled to keep the \$700 deposit and I order them to refund it.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT generally 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 applies to landlord-tenant relationships and not roommate relationships like this one. I find that this dispute falls within the CRT's small claims jurisdiction over debt and damages, as set out in CRTA section 118.
4. The CRT conducts most hearings by written submissions, but it has discretion to decide the hearing's format, including by telephone or videoconference. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondent must return the applicant's \$700 deposit.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The respondent rented and lived in a multi-bedroom home. They rented some of the bedrooms to roommates. The parties did not have a written agreement. On November 1, 2023, the applicant paid the respondent a \$700 deposit, representing half of one month's rent. On November 21, the applicant moved in. The agreement was on a month-to-month basis and the applicant agreed to provide one month's notice before moving out. On November 25, the respondent provided the applicant with a copy of the "house guide", a set of rules for the roommates who occupied the home. None of this is disputed.
10. The relationship between the applicant and the other roommates was strained and ultimately short-lived. The culminating incident appears to have taken place on December 21, 2023. On that date, the applicant and her partner had sex on the shared living room couch. They were interrupted when a roommate, RI, walked out of his bedroom, saw them, and exclaimed. Some of the details, such as how the applicant and her partner responded, are disputed. It is not necessary to resolve these discrepancies. Based on RI's statement I accept that he found the incident deeply disturbing. The applicant and her partner also left a mess in the living room that night that they did not clean up until the next afternoon. The mess included food, underwear, and a used feminine hygiene product.

11. On December 28, 2023, the respondent messaged the applicant, stating that they and the other roommates had decided to ask her to move out by December 31, 2023. The applicant agreed that it was not a great fit. She offered to leave on January 1, 2024, and provided an email address for the deposit. The respondent replied that January 1 worked. Based on this exchange, I find the parties mutually agreed to end the roommate relationship. This means neither party breached the agreement by ending it with short notice, and neither party can claim damages for the lack of notice from the other.
12. The parties' messages show that the applicant moved out and collected her belongings on January 1, 2024 as agreed. She asked the respondent for an inspection, and the respondent confirmed that the room looked good. There is no suggestion here of any damage to the applicant's room or shared spaces, or cleaning costs incurred. The next day however, the respondent said they would not be returning the deposit.
13. Although the applicant must prove her claim, the respondent is the party alleging facts that entitled them to keep the deposit. Whether it is termed a "damage deposit" or a "security deposit", a deposit between roommates is presumptively refundable (see *Lagassa v. Kitchen*, 2024 BCCRT 438, at paragraph 14). For a roommate to keep all or part of a deposit, they must prove either an agreement allowing them to do so, property damage, or some other breach of contract and related damages.
14. The respondent points to the house guide. I find it did not form part of the parties' contract, because the respondent did not provide it to the applicant until four days after she moved in, well after the parties formed their contract. Even if the house guide did form part of the contract, the only relevant term said that if the applicant wanted to move out, she had to give 30 days' notice or risk losing some or all of her deposit. The term does not apply to the parties' mutual agreement to end the contract on January 1, 2024.
15. The respondent raises several reasons why they asked the applicant to move out, including physical safety, cultural safety, psychological safety, and lack of

accountability. So, I considered whether the applicant's conduct amounted to a fundamental breach of the agreement. A fundamental breach in the roommate context includes conduct that makes further performance of the agreement (in other words, continuing to live together) immediately impossible. It gives the other party the right to end the contract immediately with no further obligations, and to claim damages, such as lost rent (see, e.g., *Bennell v. Oostenbroek*, 2025 BCCRT 162, at paragraph 18). The CRT has found fundamental breaches of roommate agreements where one roommate physically assaulted another (*Arthur v. Sung*, 2024 BCCRT 708), where one roommate changed the locks and removed the other's possessions (*PD v. WY*, 2021 BCCRT 1065), and where one roommate urinated on a bed and smeared feces on various surfaces (*Bennell*).

16. I find that by having sex in a shared space and leaving garbage out overnight, the applicant was disrespectful to the other roommates. However, I do not accept that it created a serious safety issue that made living together immediately impossible. I acknowledge that the respondent felt they were acting in all the roommates' best interests by asking the applicant to move out. However, that did not give the respondent the right to keep the deposit.
17. As the applicant did not agree that the respondent could keep the deposit, and her conduct did not amount to a fundamental breach of the roommate agreement, the respondent was required to return the deposit after the applicant moved out. So, I order the respondent to pay the applicant \$700.
18. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$700 from January 2, 2024, to the date of this decision. This equals \$46.10.
19. Under CRTA section 49 and the CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant was successful but did not pay CRT fees. I find the respondent must reimburse her \$14.28 in dispute-related expenses for registered mail.

ORDERS

20. Within 14 days of the date of this decision, I order the respondent to pay the applicant a total of \$760.38, broken down as follows:
- a. \$700 in debt,
 - b. \$46.10 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$14.28 for dispute-related expenses.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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 a court order.

Micah Carmody, Tribunal Member