



Civil Resolution Tribunal

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File: SC-2024-007277

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Diop v. Eng*, 2025 BCCRT 1622

B E T W E E N :

KARINE ANTOINETTE TENING DIOP

APPLICANT

A N D :

LUCIA MINERVA HERNANDEZ ENG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a dispute between former roommates.
2. The applicant, Karine Antoinette Tening Diop, rented a room from the respondent, Lucia Minerva Hernandez Eng. Ms. Diop says that Ms. Eng acted unreasonably, threw out Ms. Diop's belongings, and tried to force Ms. Diop to move out without

notice on June 25, 2024. Ms. Diop says she felt unsafe staying with Ms. Eng, so she moved out on June 26, 2024.

3. In this dispute, Ms. Diop claims \$667, for a \$500 security deposit and a \$167 refund for the remainder of June 2024's rent.
4. Ms. Eng says Ms. Diop is not entitled to a refund of the security deposit because she damaged the home and bedding, and did not return the fob and keys. Ms. Eng also says Ms. Diop is not entitled to a rent refund because Ms. Eng had to evict her due to "unacceptable behaviour."
5. For the reasons set out below, I allow Ms. Diop's claims in part.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. These are the CRT's formal written reasons.
8. The CRT conducts most hearings by written submissions, but it has discretion to decide the hearing's format, including by telephone or videoconference. In this dispute, each party accuses the other of untruthfulness and misleading statements. Credibility issues can in some cases be resolved by an oral hearing, but the advantages of an oral hearing must be balanced against the CRT's mandate to resolve disputes in an accessible, speedy, economical, informal and flexible manner. As set out in *Downing v. Strata Plan VR2356*, 2023 BCCA 100, this includes a consideration of what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions.

9. In this dispute, I find each party had a sufficient opportunity to tell her story in writing. Neither party asked for an oral hearing, and the amount of money at stake is relatively small. I find I can properly assess and weigh the documentary evidence and submissions before me. For these reasons, I decided that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.
10. 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.
11. Under CRTA section 48(1), the CRT may make an order on terms and conditions it considers appropriate.

Set Off

12. Ms. Eng says Ms. Diop owes money for alleged damage to Ms. Eng's home and belongings, and alleged missing items.
13. Ms. Eng did not file a counterclaim to claim payment. However, in my reasons below, I have considered whether Ms. Eng is entitled to a set off (deduction) from anything she owes Ms. Diop.

ISSUES

14. The issues in this dispute are:
 - a. Is Ms. Diop entitled to a \$167 rent refund?
 - b. Must Ms. Eng refund the \$500 security deposit?
 - c. Is Ms. Diop entitled to other damages?

EVIDENCE AND ANALYSIS

15. As applicant in this civil dispute, Ms. Diop must prove her claims on a balance of probabilities. This means more likely than not. I have read all the provided evidence and submissions, but refer only to what is necessary to explain my decision.
16. The evidence shows that Ms. Diop paid a \$500 security deposit on February 19, 2024. She moved in in March, and paid \$1,000 per month in rent. The parties had no written rental agreement.

June 2024 Rent

17. Ms. Diop says that due to Ms. Eng's "aggressive" behaviour, she had to move out on June 26, 2024. Ms. Diop claims \$167 for pro-rated rent for the remaining days in June, as she had already paid June's rent.
18. Ms. Diop says that in March 2024, when she moved in, the parties agreed on a 6-month lease term. Ms. Eng says she did not agree to a 6-month term, and instead says she wanted a long-term roommate. So, I accept the parties initially agreed that the tenancy would extend past June. Ms. Eng later gave Ms. Diop notice to move out, which I discuss below.
19. The evidence shows that the parties' relationship began to break down in May 2024. Each party submits to the CRT that they felt that the other party was threatening and aggressive. However, based on the evidence before me, including text messages and videos captured by Ms. Diop, I find that neither party was threatening or unreasonably aggressive. Rather, the parties simply disagreed about various things, including whether Ms. Diop's cousin could stay with her, whether Ms. Eng was entitled to charge extra for that, and whether Ms. Diop had caused water damage on a lower floor ceiling by continuing to use a bathtub with a leaky seal.
20. I find the evidence indicates that neither party acted in a threatening or aggressive manner. However, I find the evidence shows that the parties could not continue to live together harmoniously due to their mutual behaviour.

21. At some point, Ms. Eng texted Ms. Diop, stating that Ms. Diop was to move out on July 31, 2024 because her child needed to use the room. It is not clear from the evidence when Ms. Eng sent that text, and it is possible that July 31 was a typographical error. In any event, the evidence shows that on June 1, 2024, Ms. Eng texted and said Ms. Diop must move out by June 30.
22. Further texts show that Ms. Diop protested this, and wished to stay longer. The parties' relationship deteriorated further. Ms. Eng says that on June 25 or 26, she told Ms. Diop to move out immediately. Ms. Eng says she did so because Ms. Diop had harassed her, made inappropriate comments, and tried to provoke her.
23. While the evidence shows that the parties clearly disagreed, I find Ms. Eng has not proved she or her children were unsafe, as she suggests. In one text exchange, which Ms. Eng labelled "threats", the parties disagreed about whether Ms. Diop's cousin could stay. However, Ms. Eng had already agreed the cousin could stay for a \$200 fee. So, I find no proof of a threat.
24. Ms. Eng also points to the fact that Ms. Diop called Ms. Eng's ex-husband. However, M was the homeowner, and the evidence shows that the call was about the demand to move out without notice. Also, Ms. Eng had already brought up her ex-husband, M, in a text exchange with Ms. Diop on June 24, stating that "the police, [M] and BC tenancy agency already know about your case." In these circumstances, I find it was reasonable for Ms. Diop to call M.
25. As stated above, the parties had no written agreement, and appear to have had no verbal agreement about notice to end the tenancy. However, I find it was an implied term that either party would give reasonable notice. So, I conclude that it was unreasonable for Ms. Eng to require Ms. Diop to move out on June 26, without any notice.
26. In these circumstances, I find Ms. Diop is entitled to the balance of June's rent, which Ms. Diop calculates at \$167. Ms. Eng does not dispute that calculation, so I order her to pay it.

\$500 Security Deposit

27. Ms. Diop requests an order that Ms. Eng return the \$500 security deposit. For the following reasons, I find Ms. Eng must return half of the security deposit.
28. Again, the parties had no agreement about the terms under which Ms. Eng would return the security deposit. However, the text messages in evidence show that Ms. Diop never returned the keys and building fob.
29. Ms. Eng provided a receipt for \$150 to replace the door lock. It is not clear if she paid to replace other keys or a fob. However, I find it reasonable for Ms. Eng to keep \$200 for the lock, keys and fob.
30. As noted above, Ms. Eng says Ms. Diop damaged the ceiling by continuing to use a leaky bathtub. Ms. Diop denies this. In any event, the text messages show that Ms. Eng knew the tub's seal was leaking and refused to fix it. Since Ms. Diop was paying rent, which included use of the bathroom, I find this was unreasonable. I find Ms. Eng is not entitled to keep any portion of the security deposit for water damage. This includes damage to hair decorations, which Ms. Eng says were water damaged.
31. Ms. Eng says Ms. Diop damaged a towel and blanket, and provided photos showing a stained towel and a shredded blanket. Ms. Diop did not specifically deny damaging these items, so I accept she did. Ms. Eng did not provide receipts or other evidence to show the value of these items. In the circumstances, I find it was reasonable to retain \$50 of the damage deposit for these items.
32. Finally, Ms. Eng provided a video showing scratches on a desk and stains on a desk chair. However, Ms. Eng did not provide evidence of these items' condition before Ms. Diop moved in. She also provided no evidence that she paid to repair these items, or that the chair could not be cleaned. And, Ms. Diop provided a move-in inspection video from March 2024 that shows the table was already somewhat scratched and stained.

33. For these reasons, I find Ms. Eng may not keep any portion of the damage deposit for the desk and chair.

34. In conclusion, I find Ms. Eng must return \$250 of the damage deposit.

Additional Damages

35. In her CRT submissions, Ms. Diop raises additional claims that were not specifically included in the Dispute Notice. These include compensation for lost wages, rent for July to September 2024, higher rent at Ms. Diop's new residence, and damages for inconvenience, disruption, and emotional stress.

36. I have considered these claims, as the Dispute Notice did mention other unspecified damages. However, I find none of these claims are proved. Ms. Diop provided no evidence to establish wage loss or additional rent at her new home.

37. To order damages for emotional stress, there must be an evidentiary basis to support the claim. See for example *Lau v. Royal Bank of Canada*, 2017 BCCA 253. An applicant prove distress that goes beyond ordinary upset. While medical evidence is not necessary, testimony demonstrating a serious and prolonged disruption that went beyond ordinary emotional upset or distress could serve as such a basis. See: *Saadati v. Moorhead*, 2017 SCC 28.

38. I find the evidence before me does not establish a claim for mental stress damages. As explained above, although the parties relationship became contentious, I find the text messages and recordings in evidence show that Ms. Diop engaged equally in the parties' disagreements.

39. For these reasons, I order no additional damages.

INTEREST, FEES, AND EXPENSES

40. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Diop is entitled to pre-judgment interest on the June rent and security deposit reimbursement, totalling \$417, from July 1, 2024. This equals \$22.36.
41. 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. Ms. Diop was partially successful in this dispute, so I order reimbursement of half her CRT fees, which equals \$62.50.
42. Ms. Diop also requested reimbursement for online legal advice that she paid for. CRT rule 9.5 says the CRT will not order a party to pay another party's legal fees in a small claims dispute unless there are extraordinary circumstances. I find no extraordinary circumstances here. Rather, I find this is a routine roommate dispute. So, I dismiss Ms. Diop's claim for legal fees.

ORDERS

43. I order that within 30 days of this decision, Ms. Eng must pay Ms. Diop a total of \$501.86, broken down as follows:
- a. \$417 in debt,
 - b. \$22.36 in pre-judgment interest under the COIA, and
 - c. \$62.50 in CRT fees.
44. Ms. Diop is entitled to post-judgment interest under the COIA, as applicable.

45. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Vice Chair