



# Civil Resolution Tribunal

Date Issued: February 21, 2024

Files: SC-2022-000720  
and SC-2023-007908

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shukla v. Estate of Peter Kwan Ming Szeto, deceased*, 2024 BCCRT 162

B E T W E E N :

ASHOK SHUKLA

**APPLICANT**

A N D :

Estate of PETER KWAN MING SZETO, deceased

**RESPONDENT**

A N D :

ASHOK SHUKLA

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. These disputes are about a commercial lease. This decision relates to 2 linked disputes that I find are a primary claim and counterclaim involving the same parties, the same lease, and related issues, so I have issued one decision for both disputes.
2. In 2016, Ashok Shukla rented a commercial unit in Vancouver from Peter Kwan Ming Szeto (landlord) for a 5-year term from June 1, 2016 to May 31, 2021. Mr. Shukla paid a \$4,726.40 security deposit at the start of the lease term. The landlord has since died. Mr. Shukla rented the unit for an additional 2 months after the 5-year term ended and vacated the unit at the end of July 2021. He paid rent for June 2021 but did not pay rent for July 2021. His security deposit has not been returned.
3. In SC-2022-000720, Mr. Shukla says the Estate of Peter Kwan Ming Szeto, deceased (estate) overcharged him rent for June and July 2021. He also says the estate agreed to deduct his July 2021 rent amount from his security deposit but failed to return the balance. Mr. Shukla claims \$1,943.20 as the return of his security deposit balance after deducting July 2021's rent, and \$560 as reimbursement for rent overcharges for June and July 2021, for a total of \$2,503.20.
4. The estate denies overcharging Mr. Shukla rent for June and July 2021. It says Mr. Shukla underpaid monthly rent for the final 12 months of the lease term, and failed to pay rent in July 2021, and so he is not entitled to the return of his security deposit. The estate says it does not owe Mr. Shukla anything.
5. In SC-2023-007908, the estate claims \$3,063.20 in rent for July 2021, \$1,680 in rent shortfall for the last 12 months of the lease term, and \$1,109.90 in contractual interest at a rate of 11.7% per year, for a total of \$5,853.10. However, the estate has deducted from this amount the \$4,726.40 security deposit it retained from Mr. Shukla, so it claims the balance of \$1,126.70 in this dispute.
6. Mr. Shukla denies owing the estate any money for a rent shortfall in the final 12 months of the lease term, and he says his security deposit more than covers his July 2021 rent payment. He says he does not owe the estate anything.

7. Mr. Shukla is self-represented, and the estate is represented by the landlord's daughter.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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.
9. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that 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 that an oral hearing is not necessary in the interests of justice.
10. 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. The CRT may also ask questions of the parties and witness and inform itself in any other way it considers appropriate.
11. Where permitted by section 118 of the CRTA, 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.

## ***Limitation Act***

12. Section 13 of the CRTA says the *Limitation Act* applies to the CRT. The *Limitation Act* creates a 2-year limitation period for most claims, including this one. Under section 8 of the *Limitation Act*, the limitation period starts running when a person discovers their claim. A party discovers a claim when they know or reasonably should

know that another person or entity caused them to incur a loss, and that a legal proceeding would be an appropriate way to remedy the loss.

13. The estate submitted its Dispute Notice on July 15, 2023. If this was a standalone claim this would mean that any claims the estate discovered before July 15, 2021, would be out of time and must be dismissed, even if they would have otherwise been successful. However, section 22 of the *Limitation Act* allows a party to bring a counterclaim if it is connected or related to the original claim, even if the applicable limitation period for the counterclaim has expired. I am satisfied that the estate's counterclaim is related to Mr. Shukla's primary claim, which he brought within the applicable limitation period. So, I find the estate's claim is not out of time. I address the merits of the estate's claims below.

### ***Other Procedural Issues***

14. In its initial submissions the estate provided excerpts of the lease, but neither party provided the entire lease agreement as evidence. Since both parties' claims are about specific provisions in the lease, I asked them to submit the entire lease. The estate provided an unsigned lease. I asked Mr. Shukla if the version the estate submitted is the same version that he signed. He said he could not confirm because he was traveling overseas and would not have access to the lease until he returned on March 20, 2024. He asked for an extension until the end of March 2024 to respond. In the interest of speediness and efficiency, I declined to grant the extension. This is because Mr. Shukla already had the opportunity to provide the lease in his initial submissions and in his response submissions in the counterclaim but did not do so. I also determined that I could decide his claim based on the lease excerpts the estate initially provided, which Mr. Shukla already had the opportunity to respond to.
15. Finally, I note here that in his Dispute Notice and submissions Mr. Shukla refers to construction the estate undertook while he was renting the unit. He says the construction interfered with his business' operations. He also says that when he asked the estate about renewing the lease, it demanded above market rental prices which he says were intended to force him out of the unit so the estate could complete

further construction. Mr. Shukla also says the estate failed to apply for any government COVID-19 rent relief programs to his detriment. However, Mr. Shukla has not claimed a remedy for any of these allegations, so I find they are not properly before me. I decline to address them further in this decision.

## **ISSUES**

16. The issues in this dispute are:

- a. Did the estate overcharge Mr. Shukla rent for June and July 2021?
- b. Is Mr. Shukla entitled to the return of his security deposit?
- c. Does Mr. Shukla owe the estate for unpaid rent and contractual interest?

## **EVIDENCE AND ANALYSIS**

17. As the applicant in this civil proceeding, Mr. Shukla must prove his claims on a balance of probabilities, which means more likely than not. Likewise, the estate must prove its counterclaim to the same standard. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
18. As noted above, in 2016, Mr. Shukla and the landlord signed a lease agreement with a 5-year term from June 1, 2016 to May 31, 2021. Mr. Shukla paid a \$4,726.40 security deposit. At the end of the lease term, Mr. Shukla asked the estate if he could stay in the unit for 2 additional months after the lease ended. The estate said it would allow it if Mr. Shukla paid \$3,063.20 monthly for rent, which Mr. Shukla accepted. Mr. Shukla paid \$3,063.20 for June 2021's rent but did not pay rent for July 2021. He vacated the unit at the end of July 2021.
19. On September 1, 2021, the estate sent Mr. Shukla a notice of default and termination letter. It said the lease was terminated and Mr. Shukla was in default for failure to pay rent and penalties totaling \$5,393.20. The letter said that because Mr. Shukla was in default, the estate would not return the security deposit, but instead applied the

\$4,726.40 security deposit toward the amount it claimed was owing. It said Mr. Shukla still owed the balance of \$666.80, which was due October 1, 2021, “with interest charged at 10% on balance per month thereafter”.

***Did the estate overcharge Mr. Shukla rent for June and July 2021?***

20. Mr. Shukla says the estate overcharged him a total of \$560 in rent for June and July 2021. He says he agreed to pay the estate \$3,063.20 per month for June and July 2021. However, he claims that before agreeing he asked for a reduced rate because of COVID-19-related financial constraints, but the estate threatened that he would have to vacate the unit if he did not pay \$3,063.20 per month for the additional 2 months. While he does not expressly say so, I find Mr. Shukla is claiming that he agreed to this arrangement under duress, which is a defence to the enforceability of a contract.
21. To prove duress, Mr. Shukla must first establish that the estate exerted pressure to such a degree that his true consent did not exist. In determining this I must consider various factors such as whether he objected, whether he had an adequate legal remedy or alternative course of action, whether he received independent legal advice, and whether he took steps to avoid the contract. If Mr. Shukla can establish this first aspect of the test for duress, he must then prove that there was an improper or illegitimate element to the pressure (see *Dairy Queen Canada, Inc. v. M.Y. Sundae*, 2017 BCCA 442).
22. While Mr. Shukla may not have wanted to pay the \$3,063.20 per month he ultimately agreed to, I find there is no evidence he made the agreement under duress. I find the \$3,063.20 monthly rental rate he agreed to is less than what he was required to pay under the terms of the lease. Clause 15 of the lease allowed Mr. Shukla to remain in possession of the unit on a month-to-month basis after the lease term ended without signing a new lease. That clause says the monthly rent payable in those circumstances was one-tenth of the rent payable in the last 12 months of the lease term. As discussed further below, on the evidence before me I find Mr. Shukla paid \$2,773.20 in rent for each of the last 12 months of the lease term. One tenth of that

amount is \$3,327.84, which is less than the \$3,063.20 he agreed to pay monthly for June and July 2021.

23. I find Mr. Shukla has failed to prove that the estate overcharged him monthly rent for June and July 2021. I dismiss this claim.

***Is Mr. Shukla entitled to the return of his security deposit?***

24. Mr. Shukla claims \$1,943.20 as the return of his security deposit balance after deducting July 2021's rent. The estate maintains the position it took in its September 1, 2021 letter. It claims that because the total amount of rent owing exceeds the security deposit amount, it is not required to return the security deposit.
25. Having found that Mr. Shukla agreed to pay \$3,063.20 in rent for June and July 2021, I find he owes the estate \$3,063.20 for July's rent. Under the terms of the lease, I find the estate was entitled to deduct this amount from Mr. Shukla's security deposit. Mr. Shukla does not dispute this. \$4,726.40 less \$3,063.20 is \$1,663.20, not \$1,943.20 as Mr. Shukla claims. So, I find Mr. Shukla is entitled to the return of \$1,663.20 of his security deposit, subject to any proven set off in the estate's counterclaim.

***Does Mr. Shukla owe the estate for unpaid rent and contractual interest?***

26. The estate claims \$140 in rent shortfall for each of the last 12 months of the lease term, for a total of \$1,680. It also claims \$3,063.20 for unpaid July 2021 rent, and \$1,109.90 in contractual interest, less Mr. Shukla's \$4,726.40 security deposit, for a total of \$1,126.70. In its reply submissions the estate adjusted its contractual interest calculation to \$1,446.68 to account for the increased prime rate since it filed its counterclaim.
27. First, I address the estate's claim for the monthly rent shortfall in the last 12 months of the lease term. The parties disagree about the rental rate during that period. The estate says the monthly rent for that period was \$2,923.20. It says this calculation is based on annual minimum rent of \$6.88 per square foot for the 1600 square foot unit, plus an additional \$14 per square foot in the fifth year of the lease, plus GST. The

lease sets out the annual minimum rent of \$6.88 per square foot. However, I find there is nothing in the lease setting out an additional rate of \$14 per square foot as the estate alleges.

28. Clauses 5.1(b) and (c) of the lease require Mr. Shukla to pay additional rent on top of the minimum rent to account for various costs including common area maintenance costs, heating and ventilating costs and the cost of replacing those units, insurance costs, municipal and other real property taxes, and other costs related to Mr. Shukla's use of the building. However, the lease does not set out any specific amount for these costs or the total additional rent, and there is nothing in the other documentary evidence indicating the amount of these costs or the additional rent.
29. In support of its position, the estate submitted a June 2, 2020, text it sent to Mr. Shukla stating that the 12 post-dated rent cheques it received from him for June 1, 2020, to May 1, 2021 for \$2,773.20 per month were incorrect, and Mr. Shukla was required to pay \$2,923.20 per month. It also submitted an undated text it sent to Mr. Shukla's family member in early June 2020 reminding Mr. Shukla that he owed an additional \$150 per month. However, there is no evidence that Mr. Shukla ever agreed to this increased rent amount.
30. Mr. Shukla says his monthly rent in the last 12 months of the lease term was the same as it was during the fourth year of the lease term. I note here that throughout their submissions both parties refer to that amount as either \$2,773.20 or \$2,783.20. However, Mr. Shukla undisputedly paid the same amount of rent in the final year of the lease as he did in the fourth year of the lease, and he submitted 3 cheques for November 1, 2020, January 1, 2021, and February 1, 2021, all for \$2,773.20. I find this is the best evidence of the rental rate for the fourth year of the lease, and the rental rate Mr. Shukla says he was required to pay in the fifth and final year of the lease term.
31. In support of his position, Mr. Shukla relies on 2 text messages the estate sent him and his family member in mid-October 2020. The texts say that Mr. Shukla's October 1, 2021, cheque was returned and asked him to send a new cheque for \$2,873.20,



which included a \$100 late fee. Aside from the estate's texts in June 2020 about the increased rent, there is no evidence the estate communicated anything more to Mr. Shukla about the increased rent until August 2021, after Mr. Shukla had vacated the unit. On the evidence before me, I am satisfied that Mr. Shukla was not required to pay more than \$2,773.20 per month during the final year of the lease. I dismiss the estate's claim for rent shortfall for the last 12 months of the lease term.

32. The estate also claims \$3,063.20 for Mr. Shukla's July 2021 rent payment. However, I have already deducted that amount from the security deposit I find Mr. Shukla is owed, so I have already accounted for that unpaid rent amount in my analysis above.
33. Finally, the estate claims contractual interest on the amounts owing. The estate relies on clause 13.6 of the lease which says that for all overdue rent payments, Mr. Shukla was required to pay the landlord "interest at the rate equal to 5% per annum above the prevailing Prime Rate". However, I have found there is no rent shortfall owing for the last 12 months of the lease term, and the estate deducted the July 2021 rent from the security deposit immediately, so there is no amount owing. Having found there are no rental amounts owing under the lease, I find the estate is not entitled to contractual interest. I dismiss this claim.
34. In summary, I find the estate must pay Mr. Shukla \$1,663.20 as the return of his security deposit balance.
35. The Court *Order Interest Act* applies to the CRT. However, in his Dispute Notice Mr. Shukla expressly said he did not want to claim interest, so I decline to award any.
36. 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. I see no reason in this case not to follow that general rule. Since Mr. Shukla was generally successful, I find he is entitled to be reimbursed the \$125 he paid in CRT fees. Since the estate was unsuccessful, I find it is not entitled to reimbursement for its CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

37. Within 15 days of the date of this order, I order the estate to pay Mr. Shukla \$1,788.20, broken down as follows:
- a. \$1,663.20 as a refund of Mr. Shukla's security deposit balance, and
  - b. \$125 in CRT fees.
38. Mr. Shukla is entitled to post-judgment interest, as applicable.
39. 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.

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Sarah Orr, Tribunal Member