



Civil Resolution Tribunal

Date Issued: July 12, 2024

File: SC-2023-004450

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zaker v de Leon Correa*, 2024 BCCRT 672

B E T W E E N :

MORTEZA ZAKER

APPLICANT

A N D :

RODRIGO DE LEON CORREA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Deanna Rivers

INTRODUCTION

1. This is a dispute about a roommate contract.

2. The applicant, Morteza Zaker, says he rented a room on the ground floor of a house, but ended up living in the basement. He says the laundry machine caused him health issues, and he was forced to move out. He claims \$4,150 for expenses related to moving and damages for alleged health issues.
3. The respondent, Rodrigo de Leon Correa, says Mr. Zaker asked to change rooms, there was nothing wrong with the laundry, and that Mr. Zaker asked to end the tenancy.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, 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.
7. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily needed where 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 have given different recollections of what occurred.
8. Neither party requested an oral hearing. Since the applicant has already moved out, the only issue in this dispute is about financial compensation and not about access to housing. For these reasons, I decided that the benefit of an oral hearing did not outweigh the efficiency of a hearing by written submissions.

9. 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.
10. 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.
11. The CRT does not have jurisdiction over residential tenancy disputes, which are within the exclusive jurisdiction of the director of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). However, the RTA does not apply to disputes between co-tenants or roommates. Mr. de Leon Correa says that this dispute was dismissed by the RTB, however, Mr. Zaker withdrew his dispute. For that reason, I find that that the RTA does not apply, and this dispute is within the CRT's small claims jurisdiction as set out in section 118 of the CRTA.

ISSUES

12. The issues in this dispute are:
 - a. Did Mr. de Leon Correa breach the contract by:
 - i. Changing the room Mr. Zaker was renting?
 - ii. Having laundry machines that emitted toxic smells and caused Mr. Zaker health issues?
 - iii. Terminating the contract without proper notice?
 - b. If so, does Mr. de Leon Correa owe Mr. Zaker \$4,150, or some other amount, for moving expenses, including real estate fees and increased rent, and damages for health issues.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Mr. Zaker must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.
14. A sublease contract is in evidence. The contract provides that Mr. Zaker agreed to sublease a room and bathroom from Mr. de Leon Correa starting February 1, 2023, for \$950 each month, and a security deposit of \$475. There is no mention of laundry in the contract. Each party agreed to give 30 days notice to end the contract. Both parties signed the contract on March 30, 2023. There is no explanation of the difference in the commencement date, but the parties agree that Mr. Zaker moved into the house and started paying rent on April 1, 2023.

The Room

15. The parties agree that Mr. Zaker originally agreed to rent a ground floor room but moved into a basement room on April 2, 2023. Mr. Zaker says it was a temporary move. Mr. de Leon Correa says it was an amendment to the contract, requested by Mr. Zaker.
16. On April 2, Mr. de Leon Correa texted Mr. Zaker asking for \$50 more for the deposit and \$100 more for the month's rent in the basement room. He also provided a screenshot of the e-transfer receipt for the increased amount for the basement room. Mr. Zaker's message in the e-transfer said that \$100 is for the difference in the basement room rent for April 2023 and \$50 for the deposit, that there was agreement he would move out of the ground floor room and into the basement room, and the bathroom would be shared with only one other person. Mr. Zaker's letter dated April 8, 2023, says he agreed to rent the basement room.
17. I find that there was an amendment to the contract that Mr. Zaker was to have the basement room for \$1,050 a month, with a security deposit of \$525.

The Laundry

18. Soon after moving into the basement room, Mr. Zaker complained about the laundry machines, saying they were noisy and were releasing a harmful toxic smell which was causing him to have health conditions. Mr. Zaker's text messages and letters to Mr. de Leon Correa said his eyes burned and he felt short of breath, that he could not breathe or sleep, and his health was at risk from the machine. He asked for an eviction notice.
19. Mr. de Leon Correa says that the landlord had the laundry machines inspected, and they were in working condition. I could not open one document related to this, but find it is not necessary given my conclusions below.
20. Although not specifically stated, I find Mr. Zaker is claiming Mr. de Leon Correa fundamentally breached the contract because the laundry caused him health issues. A fundamental breach occurs when a party does not fulfill a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract. See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC).
21. Generally, expert evidence is required when the evidence is "specialized, scientific or complex," and beyond common knowledge. See *Tryax v Hryb*, 2017 BCSC 1052. So expert evidence is needed to show that the laundry machines were causing Mr. Zaker's alleged health condition.
22. Mr. Zaker did not provide opinion evidence from an expert that the laundry machine caused any toxic smells, produced any toxic elements, or otherwise caused a health risk. Mr. Zaker also did not provide any medical evidence that his health was harmed. I find that Mr. Zaker has not proved that the laundry caused him health issues.
23. I dismiss his claim for damages related to any alleged health issues.

Notice for Ending the Tenancy

24. On April 10, 2023, Mr. Zaker told Mr. de Leon Correa that he wanted to either move into the original ground floor room, and if that was not possible, to end the contract and move out right away. Mr. de Leon Correa confirmed that the original room was rented, and agreed to release Mr. Zaker from the contract, waiving the 30 days' notice requirement. Mr. Zaker moved out on April 27, 2023. Mr. de Leon Correa returned the damage deposit less an amount for utilities and for damage to property.
25. I find that Mr. Zaker and Mr. de Leon Correa agreed that the contract was terminated, and the notice period was waived. So, I dismiss Mr. Zaker's claims for moving expenses as they relate to Mr. de Leon Correa's alleged failure to give proper notice.

Conclusion

26. I find that Mr. de Leon Correa did not breach the sublease contract. Given this, I do not have to consider Mr. Zaker's damages claim in any detail.
27. For the above reasons, I dismiss Mr. Zaker's claims.

Fees and Dispute Related Expenses

28. 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. However, neither party paid any tribunal fees or claimed any dispute-related expenses.

ORDER

29. I dismiss Mr. Zaker's claim and this dispute.

Deanna Rivers, Tribunal Member

