



Civil Resolution Tribunal

Date Issued: December 18, 2024

File: SC-2023-007939

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Han v. Carnaby*, 2024 BCCRT 1282

B E T W E E N :

JEONG HAN

APPLICANT

A N D :

STUART ROY CARNABY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about unpaid rent under a garage workshop and storage agreement.
2. The applicant, Jeong Han, says the respondent Stuart Roy Carnaby rented the garage at the applicant's residence. The applicant seeks \$1,450 for unpaid rent and \$1,500 for costs to remove the respondent's belongings from the garage.

3. The respondent says they were evicted on May 28, 2023, and denies owing any unpaid rent. The respondent says the applicant owes them money under a separate agreement related to a room rental in the applicant's basement suite. The respondent did not file a counterclaim for the money the applicant allegedly owes.
4. Both parties represent themselves.

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 *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 says 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 hearing's format, 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. I find that an oral hearing is not necessary in the interests of justice.
7. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by CRTA section 118, 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.

ISSUES

9. The issues in this dispute are:

- a. Is this dispute within the CRT's jurisdiction?
- b. Is there a separate dispute about the basement rental?
- c. Is the applicant entitled to unpaid rent?

EVIDENCE AND ANALYSIS

- 10. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
- 11. The parties entered two separate tenancy arrangements. In one rental agreement the respondent rented the applicant's garage and part of the greenhouse for \$300 per month. The respondent used the garage for storage and as a workshop to build wooden planters. The applicant sells the planters. So, I find that the respondent used the applicant's garage for a commercial purpose.
- 12. In the other rental agreement, the respondent allegedly leased a room in the applicant's basement suite. Neither party submitted a copy of this agreement in evidence. It is not clear if the parties agreed on the rent for the basement suite room.

Is this dispute within the CRT's jurisdiction?

- 13. In general, residential tenancy disputes are within the exclusive jurisdiction of the Residential Tenancy Branch (RTB) under the *Residential Tenancy Act* (RTA). The parties had an RTB hearing. The parties did not provide information about the outcome of that hearing in their evidence. I asked the parties for further submissions regarding the RTB hearing. The applicant provided a response that included the RTB decision. The respondent also provided further submissions.
- 14. For the reasons set out below, I find this dispute is not a residential tenancy matter within the jurisdiction of the RTB. I find this is a contractual dispute within the CRT's small claims jurisdiction over debt and damages.

15. RTA section 2(1) says the act applies to tenancy agreements, rental units, and other residential property. RTA section 1 defines a tenancy agreement as an agreement between a landlord and tenant for a rental unit. A rental unit is defined as living accommodation rented or intended to be rented to a tenant.
16. Both parties acknowledge their dispute went before the RTB. The RTB issued a decision on September 28, 2023. The RTB found that the garage rental was a commercial workshop. Since the RTB does not decide disputes about commercial workshops it declined to proceed with the dispute about the garage rental agreement.
17. So, I find the RTA does not apply to this dispute.

Is there a separate dispute about the basement rental?

18. In their Dispute Notice, the applicant refers to other amounts the respondent owed or paid under a separate tenancy agreement to rent living space in the applicant's basement suite.
19. The applicant says the respondent agreed to rent a room in the basement suite for \$1,000 per month but then asked to sleep on a couch elsewhere in the house instead. The applicant said they only permitted the respondent to stay on the couch for May 2023 at a cost of \$400.
20. The applicant's Dispute Notice does not claim any damages relating to the basement suite rental. The respondent claims damages arising from the basement suite rental but did not file a counterclaim for damages. So, I find any alleged damages arising from the basement suite rental agreement are not part of this dispute.

Is the applicant entitled to unpaid rent?

21. For the reasons below I find the applicant has proved entitlement to part of the unpaid rent.

22. In the Dispute Notice the applicant asks for a monetary order for \$550 plus \$600 plus the outstanding rent from August, September and October 2023 (\$900) which totals more than the \$1,450 the applicant claimed for unpaid rent in their Dispute Notice. I consider the applicant's claim for \$550 and \$900. However, the applicant did not explain the additional claim for \$600 so I dismiss this part of the claim.
23. The applicant says the respondent entered into the tenancy agreement for the garage on March 15, 2023. The applicant provided a copy of three pages of a standard form residential tenancy contract between the parties. The applicant did not provide a signature page showing the respondent agreed to the contract terms.
24. The respondent says there was no written agreement for the garage rental. Although the applicant provided parts of the tenancy agreement, I find these parts do not prove the parties made a written agreement. In the absence of the signature page, I find the rental agreement was not signed by either party. So, I find the unsigned contract is not binding on the parties.
25. An unwritten contract is enforceable like a written contract but can be harder to prove. Here, the parties conduct shows they agreed to a monthly rent of \$300. The parties provided receipts that show two \$300 rental payments. The contract also notes a security deposit of \$300. The respondent provided a handwritten receipt for the first rent payment that also noted the respondent paid a deposit.
26. Although the receipt does not say if the deposit was a security deposit or a damage deposit, I accept that the parties' intention was for the respondent to pay a security deposit. This matters as it is commonly understood that security deposits cover damage that goes beyond normal wear and tear, such as unpaid rent, or other financial obligations under an agreement, while damage deposits only cover damage that goes beyond normal wear and tear (see, for example, *Cerelle Corp. v. Bebe Cece Ventures*, 2002 BCPC 225 at paragraph 56).

The \$550 claim

27. Without further evidence, I find both parties acknowledged that the garage tenancy lasted at least four months between either March 15 to July 15 or April 1 to July 31. Based on \$300 per month, I find the applicant was entitled to \$1,200 in rent.
28. The applicant and the respondent provided two different receipts which together show that the respondent paid a total of \$600 in rent for two months plus a damage deposit of \$300. The applicant issued the receipts for each 30-day period, which show the dates as March 15 to April 15 and April 15 to May 15. Neither party provided receipts for May 15 to June 15 or June 15 to July 15.
29. The applicant says that as of July 2, 2023, the respondent owed \$550. The applicant did not provide a breakdown of this sum.
30. I infer from the available evidence that the outstanding amounts owing consisted of \$300 for the July rent plus \$250 unpaid rent from May or June. The respondent does not describe any attempts to pay the June rent.
31. The respondent says they paid \$150 toward the July rent but the applicant did not provide a receipt or other proof of payment. The respondent says the applicant refused to accept rent from the respondent after July 2023. The respondent does not say what attempts they made to pay the applicant the rest of the July rent. Since the respondent did not provide evidence of the July rent payment or their attempts to pay, I do not accept the respondent's submission that they paid half the July rent.
32. Since the respondent acknowledges attempting to pay for the July rent, I find the respondent acknowledged they owed the July rent so I find the tenancy continued until at least July 2023. So, I find the respondent was obligated to pay the June rent and July rent.
33. The respondent claims they did work in the applicant's garden to offset some of the rental cost. However, there is no evidence of an agreement to offset rental costs against yard maintenance labour.

34. The respondent also relies on the damage deposit and rent that they allegedly paid under the basement suite agreement to offset amounts owed under the garage agreement. As stated above, the respondent did not advance a counterclaim for this amount, and did not provide evidence of this agreement. So, I find the respondent cannot rely on amounts allegedly paid under the basement rental agreement.
35. The applicant did not provide evidence that the \$300 security deposit was used for other costs. So, I find the applicant can use the security deposit against unpaid rent. The applicant said the respondent owed \$550 as of July 2, 2023. After deducting the \$300 security deposit from the amount owing, I find the respondent owes \$250 for unpaid rent up to July 15, 2023. According to the applicant this rent was payable on June 15, 2023, so I will calculate pre-judgment interest from June 15, 2023.

The \$900 claim

36. The applicant also claimed unpaid rent for August, September and October 2023. The applicant did not provide any photos or other evidence to prove that the respondent continued to occupy the garage until October 2023.
37. In their submissions, the applicant further claimed that the tenancy continued until August 14, 2024. However, the applicant did not provide any evidence that the respondent continued to occupy the garage until August 2024. So, I find the applicant has not proved the tenancy continued until August 14, 2024.
38. The applicant provided no evidence of the respondent's continued occupancy of the garage after July 2023 and the respondent disputes owing further rent. Since the applicant has the burden to prove their claim, I find the applicant has not proved the respondent continued to occupy the garage from August to October 2023. So, I find the applicant has not proved they are entitled to rent from August to October 2023 or any later date.
39. The applicant also claimed \$1,500 to hire a bailiff to remove the respondent's belongings from the garage. The applicant did not provide any evidence of this cost.

So, I find the applicant has not proved they paid a bailiff \$1,500 to remove the respondent's belongings from the garage. I dismiss this claim.

40. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$250 from June 15, 2023, the date of the last rent payment to the date of this decision. This equals \$19.01.
41. 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 the applicant was partially successful, I find the applicant is entitled to reimbursement of \$62.50 for half of their CRT fees. Neither party claimed dispute related expenses.

ORDERS

42. Within 30 days of the date of this order, I order Stuart Roy Carnaby to pay Jeong Han a total of \$331.51, broken down as follows:
 - a. \$250 in debt,
 - b. \$19.01 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 in CRT fees.
43. The applicant is entitled to post-judgment interest, as applicable.
44. I dismiss the applicant's other claims.

45. 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.

Mark Henderson, Tribunal Member