



Civil Resolution Tribunal

Date Issued: October 25, 2017

File: SC-2017-002476

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gill v. Chahal et al*, 2017 BCCRT 100

BETWEEN:

Sukhbir Gill

APPLICANT

AND:

Amandeep Chahal and Paramjeet Chahal

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about the respondents' admitted trespass on the applicant's property and related damage to his fence. The respondents say the trespass was inadvertent due to a lack of understanding how "fence sharing" works. The central issue is how much should be paid for the fence replacement. The applicant wants \$3,000 to replace his damaged fence by Big Red Cedar, the same company that

installed the fence, in addition to the \$125 he paid in tribunal fees. The parties are each self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

6. The issue in this dispute is how much the respondents should pay the applicant for the replacement of his fence, which the respondents damaged.

EVIDENCE AND ANALYSIS

7. In late May 2017, the respondents altered the applicant's fence without his consent, and damaged it. I accept they did so without knowing the fence sat entirely on the applicant's property, which is now undisputed. In particular, the respondents hung a clothing line on one of the fence posts that later caused the fence to lean, which clothing line has since been removed. The respondents also attached a gate to the applicant's fence. They also painted "their" side of the fence, and the paint dripped onto the applicant's side. It is undisputed that the fence requires replacement.
8. The applicant wants his fence replaced by Big Red Cedar, who he says built the original fence for \$3,000.00. Big Red Cedar's September 19, 2017 quote is \$2,992.50. This quote is for "fence installation charge – 6' Rock Solid Grade 1 Panels – 70". There is no mention of warranty.
9. The respondents offered the applicant \$2,000 based on a September 15, 2017 quote of \$1,890.00 from Abby Fence. The Abby Fence quote was to install "71' of solid fence" to match the existing fence with garden ties underneath, with grade one lumber for the cedar fence. The quote offered a 2-year warranty.
10. I find there is no apparent meaningful distinction between the two fence quotes, apart from the price. The owner says he trusts Big Red Cedar and liked their work. The respondents essentially say that their lower quote is reasonable.
11. The applicant is entitled to be put in the position he would have been had the damage not occurred. I must also consider the applicant's duty to mitigate their damages. Based on the similarity of the quotes, and that the applicant has given no reasonable reason to reject Abby Fence apart from his preference for Big Red Cedar, I find an order for \$2,000 is appropriate for the fence replacement claim.
12. In accordance with section 49 of the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of his \$125 in tribunal fees. I say this because while the applicant was successful, my order is the same as what the

respondent had previously offered. There are no claimed dispute-related expenses.

ORDERS

13. I order that the respondents:
 - a. Immediately remove their gate from the fence, and
 - b. Pay the applicant \$2,000.00, as compensation for the replacement of the fence, within 30 days.
14. I dismiss the applicant's claim for reimbursement of \$125 in tribunal fees.
15. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.
16. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
17. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair