



Civil Resolution Tribunal

Date Issued: May 1, 2018

File: SC-2017-003712

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Broschak v. That Guy Vanlines LTD*, 2018 BCCRT 158

BETWEEN:

John Broschak

APPLICANT

AND:

That Guy Vanlines LTD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

R. Hoops Harrison

INTRODUCTION

1. The applicant, John Broschak, hired the respondent moving company, That Guy Vanlines LTD, to move his household belongings from Calgary to Kelowna. During

the move some furniture was damaged and the applicant claims for those damages.

2. Both parties are self represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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 with further submissions or proceedings because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.

ISSUES

7. Is the respondent moving company liable to the applicant, and if so what are the damages?

EVIDENCE AND ANALYSIS

9. The parties entered into a written agreement that the respondent would move the applicant's belongings from Calgary to Kelowna. The applicant paid \$2850.75 inclusive of a \$35.00 insurance charge and applicable GST. The belongings were picked up on or about July 24, 2015 and delivered on August 1, 2015.
10. No later than August 4, 2015, the applicant notified the respondent of certain lost and damaged items. Some of those concerns, such as a missing lamp, were resolved. For the other concerns, the applicant completed an insurance claim form (provided by the respondent) noting its damages totaling \$1,000.00 as follows:
 - (a) **stereo stand**: \$400.00 for replacement as it was not delivered,
 - (b) **leather sofa**: \$200.00 for repair of a dark oily abrasion and a tear to the bottom of the side panel and,
 - (c) **coffee table**: \$300.00 for replacement due to gouges/scratches to the top surface, and
 - (d) **chair**: \$100.00 for a missing chair bottom and castor piece.
11. In the insurance claim form, the applicant agreed to a settlement amount of \$800.00.
12. Communications continued back and forth between the parties, including by email, and on January 21, 2016, the respondent made an offer to settle in the amount of \$255.00. The applicant refused that offer on January 25, 2016.
13. The onus and burden of proof is on the person claiming a loss is to prove liability and its damages on a balance of probabilities.
14. The applicant relies upon a chain of emails between the parties and several receipts for payments and estimates for the belongings in question.

15. The respondent relies upon the strict wording of the parties' agreement, known as a "carriage agreement", and says the insurance claim form was not completed and submitted within 5 days of the move, as required. The respondent therefore says that it is not liable as it observed the requirements of the agreement while the applicant did not.
16. I do not agree with the respondent's position on liability. The applicant was diligent in notifying the respondent about concerns and such concerns were communicated within the 5 day period stipulated in the agreement, even though the actual insurance form was submitted later. I find the parties' emails demonstrate that the respondent was not strictly relying on a 5 day claim window and that the applicant's concerns were a live issue including up to the time of the respondent's offer.
17. I find that this defence fails and therefore the respondent is liable to the applicant for damages.
18. In assessing damages for breach of contract, the law is that *a person, so far as it can be done by money, will be put in the same position as they would have been in if the contract had been performed.* For a claim of damages, unless the property is unique, the monetary damage amount will be equivalent to reasonable repairs costs or replacement of a like kind and condition piece of property.

leather sofa

19. In its dispute notice, the applicant claims the same damages as in its insurance claim with the exception of the leather sofa which it now claims an additional \$1000.00 for replacement of the sofa. The applicant has provided a picture of the damage and the original purchase invoice.
20. The applicant says that based on "subsequent information received" that the damage cannot be repaired and that the whole leather side panel would need to be replaced. The applicant however has not provided evidence of this 'subsequent repair information' so that the respondent could fairly respond to it.

21. Based on the photo provided, I cannot agree that the severity of damage requires replacement. I find that the applicant has failed to prove its repair or replacement damages. However, noting the photographic evidence supplied and the lack of denial by the respondent, I will order \$50.00 in nominal damages.

Sony stereo stand

22. The applicant provided evidence of a picture of the original stand as well as one quote of \$258.00 for a new similar model as his model was over 30 years old and no longer produced.

23. The applicant's claim for replacement costs does not factor in the age and condition of the property in question. Also the applicant has not proven that the stand was in fact not made of particle board materials which would be specifically excluded property in the carriage agreement.

24. I take judicial notice that a 30-year old stereo stand of the like and kind as shown in the evidence supplied by the applicant would fetch nominal value in a liquidation or estate sale. Accordingly, as the respondent has not denied causing damage to the stand, I would order nominal damages in the amount of \$25.00 to the applicant.

coffee table

25. The applicant has supplied the original September 10, 1983 receipt for the Huppe coffee table. The applicant has also supplied evidence of a photo of the damage to the surface of the table.

26. I agree with the applicant that the damage is significant and is of such a nature that replacement is warranted.

27. Accordingly, I award the applicant his claim of \$300.00.

chair

28. The applicant has provided a picture of a similar castor and end piece to a chair. The applicant has provided no further evidence. Accordingly, on a balance of probabilities, I find that the applicant has not proven actual damage to the chair or reasonable repair cost. I decline to award any damage for the chair.

tribunal fees

29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125.00 in tribunal fees.

ORDERS

30. I order the respondent to immediately pay the applicant a total of \$508.00, broken down as follows:

- a. \$50.00 for the sofa,
- b. \$25.00 for the stand,
- c. \$300.00 for the table,
- d. \$8.00 (rounded from \$8.01) in pre-judgment interest, from August 4, 2015, under the *Court Order Interest Act*, and
- e. \$125.00 in tribunal fees.

15. The applicant is also entitled to post-judgment interest, as applicable.

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 it is an approved consent resolution order, or, 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.

R. Hoops Harrison, Tribunal Member