Civil Resolution Tribunal

Date Issued: June 19, 2018

File: SC-2017-002893

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hall v. Kelowna Movers Kelowna Movers*, 2018 BCCRT 265

B E T W E E N :

Steven Hall

APPLICANT

A N D :

Kelowna Movers Kelowna Movers

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Steven Hall and his spouse Hana Hall hired the respondent Kelowna Movers[1] to store and deliver their family's belongings.

[1] The style of cause reflects the name "Kelowna Movers Kelowna Movers" because this is how the respondent's name is set out in the Dispute Notice.

2. This dispute is about missing and broken items, and the amount of the respondent's fee. The 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 through written submissions, 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.

6. The parties agreed that the applicant's claim to resolve the outstanding estate and will matters was withdrawn, because it is outside the tribunal's jurisdiction. Nothing in this decision addresses that issue.

7. Under tribunal rule 126, 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.

ISSUES

8. The issues in this dispute are:

    a. Did the respondent lose and/or break certain of the applicant's belongings, and if so to what extent must the respondent pay the claimed damages?

    b. Did the parties have a binding delivery contract for $450, such that the respondent must refund the $523 it charged above that amount?

EVIDENCE AND ANALYSIS

9. Generally, in a civil claim the applicant bears the burden of proof on a balance of probabilities. However, as discussed below, in this case the respondent bears the burden of disproving it was negligent in handling the applicant's goods. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Liability

Lost boxes

10. The applicant and Ms. Hall had in around 2012 hired the respondent to move their household belongings from Vernon to Kelowna. As referenced further below, the parties disagree about whether the applicant's goods were stored in a shared space with other people's goods. In any event, it is undisputed that the applicants ultimately did not have their goods moved until the final delivery to Vernon in June 2017, as discussed below.

11. The applicant says he was never advised of any need for insurance and he expected his goods would be secure from loss or theft in a secure facility. While the respondent submits the applicant should have bought insurance, there is no contract before me indicating the applicant waived any rights against the

respondent due to lack of insurance. I place no weight on the fact the applicant did not buy insurance.

12. In June 2014, the applicant's son M attended the respondent's facility to pick up some of the applicant's and Ms. Hall's winter jackets. The applicant says M did not remove anything else, and that M told him at that point the applicant's goods were now in a shared facility with unknown others and it "was a mess".

13. The respondent says the goods were separated because the applicant that wanted different items sent to different places, although ultimately that did not happen. The respondent denies the applicant's goods were covered by other people's goods. The respondent says that because the applicant complained, it rearranged their goods so that everything was together. It is plausible that in moving and re-arranging the applicant's goods on one or more occasions between 2012 and 2016, the respondent may have misplaced some items. It was the respondent's responsibility to properly store the belongings, as it was paid a storage fee to do so.

14. At some point between June 2014 and November 2016, M attended to retrieve some of his belongings and removed numbered boxes: #2, 31, 27, 21, 37, 34, and 36. M's removal of these boxes was noted on the applicant's itemized list of boxes stored with the respondent. On balance, I accept it was noted by one of the respondent's employees at the time.

15. The respondent says the fact that the applicant allowed M to access the applicant's belongings means the respondent cannot be held responsible for anything missing. I do not agree, given that the boxes M removed were expressly noted on the list.

16. In November 2016, the applicant decided to have some of their goods from the respondent's facility returned to their cabin in Vernon. On delivery, the applicant says Ms. Hall noticed certain numbered boxes were missing: #16 - cookbooks, #32 – M's personal clothing, #39 – a 19" x 27" box of Lego, which the applicant

estimates is valued at $1,000, #42- M's shoes and boots, and #52 – a VHS camera, DVDs and CDs.

17. Ms. Hall refused to sign the delivery due to the missing items. On balance, I accept the 5 boxes identified above were missing on delivery, which is not particularly disputed.

18. The law of bailment is about the obligations on one party to safeguard the possessions of another party. The bailor is the person who gives the goods or possessions and the bailee is the person who holds or stores them. The respondent was what is known in law as a voluntary bailee for reward, someone who agrees to receive the goods as part of a transaction in which the bailee gets paid.

19. If a thing entrusted to a bailee for reward is lost, then the burden of proof is on the bailee to show the loss was not a result of their failure to take the care a reasonable person would take of the possessions. There is no exact formula as to the factors required for a bailee to disprove negligence. Each depends on their own circumstances.

20. While it appears the respondent does not dispute the boxes were missing on delivery, for clarity I find they were. I conclude the respondent has not disproved negligence. Other than alleging M may somehow be responsible, which I have rejected, the respondent has not provided any explanation for how the boxes came to be missing. I have assessed the value of the missing boxes below.

Broken furniture

21. It is undisputed that on delivery Ms. Hall also noticed broken furniture (coffee table and 2 book shelves). The applicant says the driver told Ms. Hall he would return the furniture to Kelowna to have it repaired. The applicant says the driver took the broken furniture and he has not seen it since. The applicant also says the delivery included 3 boxes and a suitcase that did not belong to the applicant, and which went back with the driver.

22. In contrast, the respondent says Ms. Hall told the driver not to worry about the broken bookshelves and that it told the driver to leave the coffee table at the cabin. The respondent acknowledges it should pay something for the damaged bookshelves. Based on the totality of the evidence before me, I accept the applicant's version of events, as I find it most consistent with the overall evidence before me.

23. On balance, I find the respondent must compensate the applicant for the coffee table and bookshelves. My assessment of damages is set out below.

Delivery quote

24. The applicant says in November 2016 their credit card was charged a total of $973.35 without their knowledge or consent. The applicant says he and Ms. Hall did not realize this until later, otherwise they would have challenged the charge immediately. The applicant seeks a refund of $523, being the difference between the $973.35 and the $450 delivery quote he says the respondent gave.

25. The applicant says the respondent's principal Ken Taylor personally quoted Ms. Hall $450 for the delivery, with the explanation that they were doing another delivery in the Vernon area and thus the transportation costs would be shared. This $450 is the same price the applicant says he paid the first time the respondent moved their things from Vernon to Kelowna. However, the applicant did not provide proof that it had paid $450 before, and instead provided a 2013 statement from the respondent showing a 2013 credit memo for $1,725 for "double paid in a move".

26. The respondent denies giving the $450 quote for the 2016 delivery, saying it is far too low for such a move. The respondent says $450 would not be a reasonable cost for a move from Kelowna to Vernon. The respondent says "our office was advised to process this [$974.35] charge on the credit card we have been using for their monthly storage charges".

27. I find the applicant has not proved he was given a $450 quote for the November 2016 delivery. It may be that they had a discussion about similar pricing as to what they say they had before, but I find on balance it is not likely the respondent would provide such a low firm quote for the move from Kelowna to Vernon. The respondent's local delivery rate is $130 per hour for a van and 2 men and with a 2.5 to 3 hour drive and 4 hours of loading/unloading time, the total job was almost 7 hours. That brings the total charge to almost $900.

28. The respondent ultimately charged 6.5 hours after Ms. Hall was given a courtesy credit of 1 hour for a delay at the time of delivery, for $845. The balance of the $973.35 total invoice was $38.58 for a prorated rate for November 2016 storage, $52.50 for December 2016 storage, and $30 plus tax for a fuel charge. On balance, I find the respondent's charges were reasonable in the circumstances.

29. I find the applicant has not proved it is entitled to any refund of the $973.35 invoice, and I dismiss this claim.

Damages

30. The applicant claims:

    a. $1,800 for the missing boxes, and

    b. $400 for broken furniture (which the applicant says the respondent took away and he has not seen since).

31. No receipts were provided for any of the applicant's claimed items or any supporting evidence to support their monetary claims for replacement value. I note that even if the legislated maximum liability discussed below did not apply, I would not make an award in the amount claimed for Lego and the other items, given the total absence of supporting evidence as to the value of the contents.

32. Based on the face of the bill of lading, the shipper, Ms. Hall, did not declare a value of the shipment. Article 10 in the 'Terms and Conditions' page of the bill of lading in evidence provides that the carrier's maximum lability is limited to $0.30

per pound per article, up to a maximum of $50 per article or carton, unless a higher value is declared. However, neither the applicant nor Ms. Hall signed a bill of lading. Therefore, I find that the limits set out in the *Motor Vehicle Act Regulations* apply.

33. In the absence of a declared value by the applicant or Ms. Hall at the time of shipping, section 37.39 of the *Motor Vehicle Act Regulations*, articles 9 and 10(b) set out 'Specified Conditions of Carriage for Household Goods'. In particular, that the respondent carrier's liability must not exceed $4.41 per kilogram, based on the total weight of the shipment. The challenge is that I have no evidence before me as to the weight of the missing 5 boxes, which were only a portion of the shipment. I also have no evidence about the weight of the coffee table and bookshelves.

34. Given the description of the contents, set out above, I find the 5 boxes altogether likely weighed 30 kilograms. I say this based on a rough estimate of 6 kilograms per box, given the description of the contents and what a box likely weighs before it is too heavy to carry. I find that an order for $132.30, the maximum permitted for the 5 boxes based on $4.41 per kilogram, is appropriate. I say this because I accept the value of the contents exceeded $132.30, although as noted above I do not find the applicant established that the value was anything close to $1,800 as claimed.

35. The applicant does not explain how he arrives at the $400 figure for broken furniture. The only evidence before me is that the bookshelves were "pressboard". I have no evidence about the type or size of the coffee table. In the circumstances, I find that a nominal award of $200 is appropriate, which also falls within the maximum $4.41 limit assuming the furniture weighed around 50 kilograms.

36. The applicant is entitled to pre-judgment interest on the $332.30 under the *Court Order Interest Act* (COIA), from November 8, 2016.

37. In accordance with the tribunal's rules, as the applicant was partially successful in his claim, I find he is entitled to reimbursement of half the $125 he paid in tribunal fees, namely $62.50.

ORDERS

38. Within 30 days, I order the respondent to pay the applicant a total of $399.32, broken down as follows:

    a. $332.30 in damages for lost or damaged items,

    b. $4.52 for pre-judgment interest under the COIA, and

    c. $62.50 in reimbursement for tribunal fees.

39. The applicant is entitled to post-judgment interest as applicable.

40. 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.

41. 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.

Shelley Lopez, Vice Chair