Date Issued: June 19, 2018

File: SC-2017-003159

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mielke v. Watt*, 2018 BCCRT 266

B E T W E E N :

Brian Mielke

APPLICANT

A N D :

Draeden Watt

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, Brian Mielke, seeks payment of $2,183.91 for a gate he alleges the respondent damaged.

2. The respondent, Draeden Watt, admits that he broke part of the gate, but says this repair should have cost less than $600.

3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.

5. 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. Neither party requested an oral hearing.

6. 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.

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.

PRELIMINARY ISSUE – PERCEPTION OF BIAS

8. After the initial submissions process was complete, a tribunal administrator discovered that she had inadvertently failed to forward to the applicant some

additional evidence provided by the respondent. The applicant was provided with the evidence, along with time to provide an additional written reply.

9. The applicant submits that this deviation from the tribunal's typical process has formed a perception of bias. He did not provide further particulars of that bias.

10. Under the principles of procedural fairness in administrative law, parties to a dispute are entitled to have their claims decided by an unbiased decision-maker. Bias may occur where a decision-maker may benefit from a particular outcome, has a relationship with one or more parties, or has made a decision before considering the parties evidence and submissions. In order to protect the integrity of the decision-making process, there must be no reasonable perception that the decision-maker is biased.

11. I was not assigned to decide this dispute until after the "missed" evidence was discovered and disclosed, and after the applicant made his final submissions. In all of the circumstances, I find there is no reasonable perception of bias in this dispute, and no actual bias.

12. I also find that any error in procedural fairness caused by the missed evidence was corrected by giving the applicant the opportunity to reply to that evidence.

ISSUES

13. The issue in this dispute is whether the respondent is responsible to pay for repairs to the applicant's gate, and if so in what amount.

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

15. The applicant's son C had a 19th birthday party at the applicant's residence on June 3, 2017.

16. The parties agree that the respondent attended the applicant's residence on June 3, 2017, and that he broke their driveway gate while exiting the property. The parties disagree on to what extent the respondent broke the gate, and the cost of the repairs.

17. The respondent says that when he left the party he pushed the gate open to exit and broke a small part of it. He also says that other people had pushed the gate open that evening, such as when he arrived. The respondent says that he went back to the house and told the applicant's son C he had broken the gate, and offered to pay to repair it.

18. These statements by the respondent are confirmed by the written statement of witness NB, who said that when they arrived at the residence, someone pushed on the gate slightly to let them in. NB said that when the respondent pushed on the gate so they could exit, the attachment point on the gate arm had snapped. NB said they went and told C about the damage.

19. The applicant says the respondent used force to open the gate, and "worked away at destroying the hydraulic arms that hold the gate". While the applicant's text messages assert that they have security video footage of this incident, no video was provided in evidence. The applicant also says the respondent was trespassing on their property, as he was not invited to the party.

20. As the respondent has admitted liability for breaking the gate, it is not necessary to for the purpose of this dispute to make a finding about whether that damage was intentional or negligent. For the same reason, I also find it is not necessary to make a finding about whether the respondent trespassed.

21. Based on the evidence, including the respondent's admission and the statement of NB, I find that the respondent is liable for damaging the applicant's gate on June 3, 2017.

Amount of Damages

22. The key issue in this dispute is how much the respondent must pay for the gate damage. The applicant submits that the repairs cost $2,183.91. However, I find that the evidence provided by the applicant does not support this amount, or that all the damage to the gate was caused by the applicant.

23. The applicant provided various photos of damaged gate parts. However, as these photos are not dated or accompanied by other evidence establishing the date the damage was documented, I am not persuaded that the damage shown was necessarily all caused by the applicant, or all caused on June 3, 2017.

24. On July 1, 2017, the applicant sent the respondent a copy of a February 3, 2017 estimate for a "hydraulic swing gate operator", for $1,059.78. However, I place significant weight on the fact that this estimate was provided 4 months before the respondent damaged the gate. The applicant says they were able to repair the gate in February 2017 by adding hydraulic fluid rather than replacing parts, and it was working perfectly before June 3, 2017. Further, the applicant has not provided an updated estimate showing the cost of repairs in June 2017, an invoice, or documentation of a service call from June 2017.

25. The applicant has also not provided evidence to explain why the parts set out in the February 2017 estimate are the same as those required to repair the June 2017 damage, even though he says the problems were different.

26. The applicant provided a copy of an email from the gate company dated February 13, 2018. It says the gate had been forced, causing damage to various listed parts. The email says that both hydraulic arms needed to be replaced. However, the email was written 8 months after the June 3, 2017 incident, and it does not say when the gate damage was observed or repaired.

27. The applicant provided a December 28, 2017 invoice from the gate company. It says the company did a service call on July 4, 2017 to determine that the gate arm

needed replacing. The email also says the company performed an after-hours service call on December 23, 2017 to work on new arms supplied by the applicant.

28. I do not accept that the July 4, 2017 service call was for the purpose of assessing damage caused by the respondent. The applicant says the gate would not open or close on June 4, 2017 due to damage caused by the applicant, so it is unclear why the service call to assess repairs for that damage would not have occurred for a month.

29. I also find that the December 23, 2017 service call was not related to June 3, 2017 damage caused by the respondent. Specifically, the evidence does not explain why it took 6 months to perform these repairs, or why it was necessary to work after hours and incur an extra charge if the damage had existed for months.

30. I also find that the applicant's evidence is inconsistent on when and how repair estimates were obtained. In his Dispute Notice, the applicant wrote that after June 3, 2017, he contacted the respondent and when he did not respond he contacted the lowest-bidding vendor from a prior inquiry, who "requoted to reassert the bid validity, availability, etc." However, in his July 1, 2017 text to the respondent, the applicant wrote that, "Several quotes were ascertained. The highest quote was $5500.00. We have proceeded to purchase the lowest quote..."

31. The applicant's Dispute Notice contradicts his July 1, 2017 text, as on July 1, 2017 he said he obtained several repair quotes, but in his Dispute Notice he said he relied on previous quotes. I find that his July 1, 2017 text is misleading, as it implies he obtained estimates specifically based on the damage caused by the respondent, when he did not do so. I place some weight on the fact that the applicant has not provided copies of any of these alleged repair quotes (the February 2017 quote was provided by the respondent), the dates or amounts of the quotes, the names of the quote providers, a copy of the "requote" he says was provided by the lowest bidder, or the amount of the requote.

32. The applicant provided what appears to be a portion of a credit card bill showing a charge to "DF Supply Inc" for $1,782.61. Given that there is no invoice, receipt, or other document showing what the $1,782.61 was spent on, or by whom, I find that this piece of evidence does not establish that the charge was for gate parts, or relates to gate damage caused by the respondent. I note that the charge was made on June 8, 2017, which is before the gate company that performed the repairs even visited the applicant's property to assess the damage.

33. For the same reasons, I find that the June 28, 2017 shipping invoice provided by the applicant does not aid in establishing the damages owed by the respondent. Again, the items were shipped before the gate company assessed what repairs were necessary. Also, the "description of goods" indicates that the items shipped were "escalator parts". While gates and escalators may have some common parts, there is no evidence before me to establish that fact, nor is there a purchase invoice showing exactly what items were ordered.

34. As previously stated, the burden of proof in this case is on the applicant. Even though the respondent has admitted liability for some gate damage, I find that the applicant's evidence does not establish that the repairs for the respondent's damage cost $2,183.91 as claimed. The applicant has not provided sufficient evidence to allow me to attribute any specific parts of its invoices or receipts to the respondent's damage. Given that, on a judgment basis I find that the respondent must pay the applicant the nominal sum of $200 for gate repairs.

35. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. In this case, the parties' success was divided, as I found that the evidence does not support the amount of damages claimed by the applicant. For that reason, I find that the tribunal fees should also be divided, and I order that the respondent pay the applicant $62.50 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.

36. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act* (COIA), as set out below in my order.

ORDERS

37. I order that, within 30 days of this decision, the respondent must pay the applicant a total of $264.42, broken down as follows:

    a. $200 for gate repairs,

    b. $1.92 in pre-judgment interest under the COIA, and

    c. $62.50 as reimbursement of tribunal fees.

38. The applicant is entitled to post-judgment interest under the COIA.

39. 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.

40. 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.

Kate Campbell, Tribunal Member