



Civil Resolution Tribunal

Date Issued: July 16, 2018

File: SC-2017-002599

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Davey Tree Expert Company of Canada, Ltd. v. Mae Etesami*,
2018 BCCRT 331

B E T W E E N :

Davey Tree Expert Company of Canada, Ltd.

APPLICANT

A N D :

Mae Etesami

RESPONDENT

A N D :

Davey Tree Expert Company of Canada, Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about tree removal services. The applicant, Davey Tree Expert Company of Canada, Ltd. (Davey Tree), says the respondent, Mae Etesami, failed to pay for tree removal it performed on her property. Davey Tree seeks an order that the respondent pay \$1,732.50.
2. Ms. Etesami disputes the amount claimed by the applicant. She also says the applicant damaged her property when cutting her neighbour's trees, and has filed a counterclaim seeking \$5,000 in compensation for property damage.
3. The 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.

ISSUES

8. The issues in this dispute are:
 - a. Must Ms. Etesami pay Davey Tree for tree removal, and if so, in what amount?
 - b. Is Davey Tree liable for damage to Ms. Etesami's property, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means Davey Tree must prove its claim that it is entitled to payment, and Ms. Etesami must prove her claim about the alleged property damage. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Payment for Tree Removal

10. The parties agree that Davey Tree removed trees from Ms. Etesami's neighbour's property in June or July 2016.
11. Davey Tree says it also removed trees from Ms. Etesami's property, for which she has failed to pay.
12. Ms. Etesami says she was inappropriately billed for her neighbour's tree cutting. However, in her submissions she acknowledges that she contacted Davey Tree about tree removal, and had tree cutting done on her own property in June 2016.

13. Statements from Ms. Etesami's neighbours also confirm that Ms. Etesami engaged Davey Tree to cut trees on her property. A November 27, 2017 letter from neighbours LM and MM states that in 2016, they decided to have several dead trees cut down because they were a potential safety threat. LM and MM said Ms. Etesami and another neighbour also decided to have trees cut down at the same time, for the same reason. LM and MM said Ms. Etesami contacted several tree removal companies, who provided quotes, and they all chose Davey Tree. LM and MM said Ms. Etesami had her trees removed in June 2016.
14. Similarly, neighbour GS signed a statement indicating that Davey Tree performed work on his property, and on Ms. Etesami's property. GS said the bill for the work on his property was sent to Ms. Etesami, and then he paid Ms. Etesami for his portion of the work.
15. I find that all of this evidence establishes that Ms. Etesami engaged Davey Tree for tree cutting, and that work was performed in June 2016. While Ms. Etesami questions why she was billed for work on GS's property, she has not dispute GS's evidence that he gave her the money to pay for that work. Accordingly, she is obligated to pay.
16. Ms. Etesami says she was not satisfied with the work. However, she has not provided any particulars or evidence about why the tree cutting work performed on her property was unsatisfactory. She provided extensive submissions and evidence about her claim that Davey Tree damaged plants, plant pots, and concrete by falling and dragging trees from her neighbour GS's property onto her property. However, the tree falling on GS's property occurred later, on July 24, 2016, and was not part of the work performed by Davey Tree on Ms. Etesami's property in June 2016. I also note that GS's statement says he was satisfied with the work performed on his property. I have addressed the property damage issue separately below.

17. For these reasons, I find that Ms. Etesami's claim of unsatisfactory service does not reduce her obligation to pay for the tree removal work on her property, or on GS's property.
18. Davey Tree has claimed \$1,732.50 for the tree removal work, but they have not provided any documentation to support that amount. Rather, the September 26, 2016 statement of account shows an outstanding balance of \$1,102.50. I therefore find that Ms. Etesami owes Davey Tree \$1,102.50 for tree removal services.

Counterclaim – Property Damage

19. As referenced above, Ms. Etesami claims \$5,000 for property damage to concrete, plant pots, and plants her yard she says was caused by Davey Tree on July 24, 2016. However, Ms. Etesami has not provided evidence to support this amount, such as purchase receipts, repair estimates, or catalogue examples of similar products to indicate price. For this reason, I find that Ms. Etesami is not entitled to \$5,000 for property damage.
20. Davey Tree has not denied that they damaged Ms. Etesami's plants and pots. Ms. Etesami did not indicate which or how many plants were damaged, and did not provide photographs of damaged plants. She provided a photograph of two broken square plastic plant pots. The plants inside appear undamaged. Davey Tree says it offered to replace a hydrangea and pots.
21. Based on the evidence and submissions before me, and on a judgment basis, I find that Davey Tree is liable for \$100 of damage to Ms. Etesami's plants and pots. I order that this amount be subtracted from the \$1,102.50 owed on Ms. Etesami's outstanding bill.
22. I have examined the photographs of the concrete damage alleged by Ms. Etesami, as well as the photographs of the felled trees and their stumps. Based on that evidence, I agree with Davey Tree's submission that based on the size and shape of the trees that were felled, they were unlikely to have cracked concrete. The tree

trunks were less than 10 inches in diameter (approximately the width of a spread male hand). While I accept that Ms. Etesami was annoyed that Davey Tree fell the trees into her yard without permission, I do not accept that they cracked the concrete. The trees were not particularly large or heavy, and the photographs show that they fell onto their outstretched limbs.

23. While Ms. Etesami says the concrete was also scratched, I could see no scratches in the photographs provided and conclude that any scratching was superficial.
24. For these reasons, I find that Ms. Etesami is not entitled to compensation for damaged concrete.

Summary

25. For the reasons set out above, I find that Ms. Etesami must pay Davey Tree \$1,102.50 for tree removal services minus \$100 for plant and pot damage, for a total of \$1,002.50.
26. Davey Tree is also entitled to pre-judgment interest on the \$1,002.50, pursuant to the *Court Order Interest Act* (COIA).
27. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. Davey Tree was substantially successful, so I order reimbursement of \$75 it paid in tribunal fees. Ms. Etesami was not substantially successful, and Davey Tree offered to replace the plants and pots before the dispute was filed, so I find she is not entitled to reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

28. I order that within 30 days of this decision, Ms. Etesami pay Davey Tree a total of \$1,093.46, broken down as follows:
 - a. \$1,102.50 for tree removal, minus \$100 for damage to plants and pots,

- b. \$15.96 in pre-judgment interest, and
 - c. \$75 in tribunal fees.
29. Davey Tree is also entitled to post-judgment interest under the COIA.
30. 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.
31. 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