



Civil Resolution Tribunal

Date Issued: September 6, 2018

File: SC-2017-007246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Busch v. Abriel*, 2018 BCCRT 500

B E T W E E N :

Ronald Busch

APPLICANT

A N D :

Jace Abriel

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Ronald Busch says that, on June 25, 2017, the respondent Jace Abriel intentionally damaged his custom built fence. The applicant asks that the respondent pay \$1,175.15 for fence repairs.

2. The respondent agrees that he kicked and shook the applicant's fence, but says he was provoked by the applicant's behaviour. The respondent contests whether his behaviour damaged the fence and whether repairs are needed in the amount claimed. The applicant says the repairs quoted include repair for normal wear and tear, unrelated to his conduct.
3. Both parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
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.
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 make one or more of the following orders:
 - a. order a party to do or stop doing something;

- b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.
8. To the extent that the parties' submissions make allegations of slander, that is an issue outside the tribunal's jurisdiction. It is clear that the parties are not getting along. Their submissions reflect disagreements about other incidents unrelated to the damaged fence. My decision is confined to the fence damage claim.

ISSUES

9. The issue in this dispute is to what extent, if any, the respondent must pay the claimed \$1,175.15 for fence repair. In looking at this question, I will consider to what extent the fence damage was caused by the respondent versus being usual wear and tear.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have addressed the evidence and arguments to the extent necessary to explain my decision.
11. Ten months after the respondent shook and kicked the applicant's fence, Innovation Fencing (Innovation) provided the applicant a quote to repair the fence for a total of \$1,175.15 (\$478.33 in materials, \$640.86 in labour, plus GST). The quote itemizes the specific damage needing repair as follows:
- 3 top rails caps lifted/loosened, 14 cracked/damaged vertical slats (impacting six sections), 1 cracked/damaged post, including loosened concrete footing for same, 1 base fascia cracked/damaged/detached.
12. I find that the delay in obtaining the quote was, at least in part, due to the request by the applicant that the April 17, 2018 quote appointment be witnessed by his father.

13. The quote is accompanied by an email from Innovation's Director which says, in part "Know that I have significantly reduced the labour to ease the pain for whoever has to pay for this."
14. The respondent submits that the fence had "no damage". I disagree.
15. The applicant provided video evidence of the respondent pushing, kicking and shaking the fence, with force, at least 5 times on June 25, 2017. The video shows that the fence, over an area of several sections and well more than 14 vertical slats, is visibly displaced with each application of force. One slat on the fence comes out of its concrete footing entirely while the respondent shakes the fence. I therefore find that this application of force damaged the fence.
16. Other evidence about the nature of the fence damage and cost to repair it comes from Innovation, who examined it. Photographs filed in evidence were consistent with the details provided in Innovation's quote, including that slats had vertical cracks in areas where the respondent shook the fence, rail caps had been loosened, one post was cracked and its concrete footing loosened, and one base fascia had cracked. Innovation particularized the areas needing repair, describing damage that is consistent with the video and photographic evidence.
17. The respondent's father, Roger Abriel, attended when the fence was examined by Innovation. It is undisputed that he was not present when the fence was damaged in June 2017. He provided a witness statement in which he says that the lumber in the fence may have aged due to natural weathering, and that he observed damage across the whole fence which he felt was not due to his son's conduct. In summary, Mr. Abriel thought the quote was too high and included repair of areas that should not be his son's responsibility.
18. On my review of the video and photographic evidence alongside the quote from Innovation, I find that repairing damage to 14 slats, 3 top rail caps, 1 post/footing and 1 base fascia is consistent with the displacement of the sections of fencing

caused by the respondent pushing and kicking on it. That is, I find that Innovation's quote is for repairs of damage caused by the respondent, and not to rebuild all or other parts of the fence. I allow the applicant's claim and order the respondent to pay the \$1,175.15.

19. 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

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,300.15, broken down as follows:
 - a. \$1,175.15 for the repair costs;
 - b. \$125.00 tribunal fees.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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.
23. 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.

Julie K. Gibson, Tribunal Member