



Civil Resolution Tribunal

Date Issued: September 19, 2018

File: SC-2017-005660

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Timarie Holdings Ltd. v. Signature Editions Millwork Inc.*, 2018 BCCRT 531

B E T W E E N :

Timarie Holdings Ltd.

APPLICANT

A N D :

Signature Editions Millwork Inc.

RESPONDENT

A N D :

Timarie Holdings Ltd.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Darrell Le Houillier

INTRODUCTION

1. The applicant, Timarie Holdings Ltd. (Timarie), leased a unit within a commercial facility to the respondent, Signature Editions Millwork Inc. (Signature). Timarie says Signature failed to pay money as required by a lease agreement. Signature says Timarie failed to remove snow from the parking lot of the commercial facility, requiring Signature to incur expenses. Timarie and respondent are each represented by an employee or officer.

JURISDICTION AND PROCEDURE

2. 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.
3. 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.
4. 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.
5. 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.

ISSUES

6. The issues in this dispute are:
 - a. Should Signature pay to Timarie any fees or expenses set out in the lease agreement?
 - b. Should Timarie pay Signature because it failed to remove snow from the parking lot of the commercial facility?

EVIDENCE

7. On April 1, 2016, Signature leased a unit within the commercial facility from Timarie. Signature was to pay monthly rent as well as hydro and natural gas expenses, to be invoiced by Timarie every three months. Timarie also made a forklift available to Signature for \$100.00 per month. All damages to the unit were to be repaired at Signature's expense.
8. On January 5, 2017, Timarie emailed three invoices to Signature, covering from October to December 2016. One, totalling \$300.00 plus \$15.00 for Goods and Services Tax (GST), was for use of the forklift. Another, totalling \$115.16, was for hydro expenses. The last, totalling \$216.90, was for natural gas expenses. The invoices for hydro expenses and natural gas expenses had bills from the respective utilities attached.
9. Also on January 5, 2017, Signature sent an invoice to the strata corporation that managed the commercial facility. The invoice, totalling \$1,040.00 plus \$52.00 of GST, was for 16 hours of labour to pick up supplies that could not be delivered to

the leased unit because access was blocked by snow. This \$1,092.00 total is the amount at issue in Signature's counterclaim.

10. On April 18, 2017, a sales representative from one of Signature's suppliers wrote an email stating that its delivery vehicle could not safely enter the parking lot at the commercial facility due to snowy conditions on January 4, 2017. Signature's officer or employee had to come pick up the supplies that were to be delivered.
11. On June 26, 2017, Timarie emailed three more invoices to Signature, covering from April to part of June 2017. They were in the same form as the invoices sent in January 2017. The invoice for the forklift was for \$300.00 plus \$15.00 for GST. The hydro invoice was for \$78.97. The natural gas invoice was for \$83.37.
12. On June 27, 2017, an employee or officer of Signature sent a text message to an employee or officer of Timarie, saying arrangements had been made to replace two panels in the overhead door. The employee or officer of Timarie answered that the repair should be cancelled.
13. On July 5, 2017, Timarie emailed three more invoices to Signature, covering the previously uninvoiced part of June 2017. The two for utility reimbursement were in the same form as invoices sent previously. The hydro invoice was for \$39.99. The natural gas invoice was for \$9.43. The final invoice, totalling \$1,285.16, was for repair to an overhead door.
14. Timarie provided photographs to the tribunal, showing damage to an overhead door. Signature provided photographs to the tribunal, showing an accumulation of snow seeming to measure several inches at the commercial facility and in front of the leased unit in particular.

ANALYSIS

Should Signature pay to Timarie any fees or expenses set out in the lease agreement?

15. Timarie says that Signature must pay the forklift rental fee and electric and natural gas expenses as defined in the lease. Timarie also says the lease makes Signature responsible for paying to repair damage to the overhead door.
16. Timarie says the arrangements Signature made to repair the door were inadequate.
17. I have reviewed the lease agreement made between Timarie and Signature. It requires Signature to reimburse to Timarie, every three months, hydro fees and natural gas fees. It also requires payment of a forklift rental fee, if used. While Signature says it over-paid for hydro, Timarie's invoices coincide with bills from the respective utilities.
18. Signature says the applicant did not provide invoices in a valid way, without specifying what the problem was. I disagree and see no defect in the invoices, noting there was no argument that they were not delivered to Signature. Signature chose to pay some and, following the disagreements about snow removal, not pay others. While Signature says it over-paid for hydro expenses, there was no counterclaim in respect of that overpayment and no figures or details were provided about this supposed overpayment.
19. For these reasons, I find that Signature should pay the invoiced amounts related to hydro fees, natural gas fees, and the forklift rental. These subtotal to \$630.00, \$234.12, and \$309.70, respectively. This totals \$1,173.82.
20. Timarie provided an invoice for repair of the overhead door in the leased unit. Signature acknowledged that it was responsible for replacing the door, but said that the invoiced amount was too great. Signature did not provide any estimates for the repair of the door. Signature did not explain what was excessive about the

invoiced amount for the repair. Given the lack of detail in Signature's submission and the itemized invoice provided to Signature, I find that the invoiced amount was appropriate and Signature is liable to pay to Timarie \$1,285.16 for repair of the overhead door.

21. I find the total amount Signature is responsible to pay to Timarie in respect of the lease agreement is \$2,458.98.

Should Timarie pay Signature because it failed to remove snow from the parking lot of the commercial facility?

22. For the counterclaim, Signature says Timarie was responsible for removing snow. Signature says Timarie's failure resulted in Signature incurring expenses.
23. Timarie says its owner was available at all hours to address any concerns with the leased unit. Timarie says it was not notified of any concerns until after the fact. In any case, Timarie says responsibility for snow removal was not defined and Signature's photographs were not taken at the relevant time. Timarie says access to the leased unit was free and clear of snow during regular business hours in January 2017.
24. I find that Timarie was not responsible for snow removal at the leased unit. There is nothing in the lease agreement to establish such a responsibility. There is likewise nothing in broad legal principles to establish such a responsibility. For example, section 6 of British Columbia's *Occupiers Liability Act* provides that a landlord is responsible for the safe conditions of leased premises where the lease agreement specifies the landlord is responsible for maintenance or repair of that premises. Without such an arrangement, it is the person occupying the premises who is responsible for ensuring that anyone using the premises will be reasonably safe in doing so.
25. Signature has not made any convincing argument why Timarie should have been responsible for access to the leased unit or for the parking lot of the commercial

facility, neither of which it was occupying. That Timarie also leased other units within the commercial facility does not confer any responsibility for the upkeep of the parking lot generally. As a result, Signature's counterclaim must fail.

26. While it is not necessary for my decision, I note that I also have reservations about the amount invoiced and claimed by Signature. I do not think the 16 hours billed has been established as reasonable or necessary and I have some question about the hourly rate described by Signature. However, as my decision does not turn on these issues, I make no findings about them and do not need to comment on them any further.

Fees and Expenses

27. 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.
28. Timarie paid \$125.00 in tribunal fees and \$33.62 in courier fees for document service. While Signature argues that courier service was not necessary, it is one of the permitted ways that documents can be served. I think it was reasonable for Timarie to use that method of document delivery so I find that Timarie is entitled to reimbursement of \$125.00 in tribunal fees and \$33.62 in dispute-related expenses.
29. The counterclaim was unsuccessful. I do not see any reason for Timarie to reimburse Signature for the tribunal fees incurred to bring the counterclaim. I find Signature is not entitled to reimbursement of any tribunal fees.

ORDERS

30. I order Signature to pay Timarie, within 30 days of the date of this order, a total of \$2,648.58, broken down as follows:
 - a. \$2,458.98 for monies owing under the lease agreement;

- b. \$30.98 in pre-judgment interest under the *Court Order Interest Act* from the date of the last invoices from Timarie to Signature (July 5, 2017); and
 - c. \$158.62 for \$125.00 in tribunal fees and \$33.62 for dispute-related expenses.
31. Timarie is entitled to post-judgment interest, as applicable.
32. 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.
33. 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.

Darrell Le Houillier, Tribunal Member