



# Civil Resolution Tribunal

Date Issued: November 22, 2018

File: SC-2018-000652

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Behrens v. Smithrite Disposal Ltd.*, 2018 BCCRT 754

B E T W E E N :

Martin Behrens

**APPLICANT**

A N D :

SMITHRITE DISPOSAL LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Volk

## INTRODUCTION

1. This is a dispute about one of the respondent's drivers damaging the applicant's fence while driving. The parties agree that the respondent is liable for the fence damage and agree to pay the Civil Resolution Tribunal (tribunal) fees. The central

issue is how much should be paid for the fence replacement. The applicant, Martin Behrens, wants \$3,000 to replace his damaged fence.

2. The applicant is self-represented. Matthew Dunford, an employee representative of the Insurance Corporation of British Columbia (ICBC) represents the respondent, SMITHRITE DISPOSAL LTD. (Smithrite). The applicant had originally named ICBC and the City of Vancouver as co-respondents, but withdrew those claims and proceeded against Smithrite only. I have amended the style of cause accordingly above.

## **JURISDICTION AND PROCEDURE**

3. 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 relationships between parties that may continue after the dispute resolution process has ended.
4. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because 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 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. 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**

7. The issue in this dispute is how much the respondent should pay the applicant for the replacement of his fence, which the respondent admittedly damaged.

## **EVIDENCE AND ANALYSIS**

8. On December 27, 2017 one of the respondent's disposal truck drivers struck the perimeter fence of the applicant's property and partially knocked over the fence, damaging it. Subsequently, the fence fell over completely. It is undisputed that the fence requires replacement.
9. The applicant wants his fence replaced and asks for \$3,000 to repair the fence. The applicant provided two quotes. One undated quote is an abbreviated web quote totaling \$4,300 to \$4,500, with little information about the work description. The other quote dated June 16, 2018 totals \$2,504.25 and provides detail of the work estimated.
10. The applicant says the June 16, 2018 quote is low because it was only prepared so that he could present it to the tribunal. However, given the detail of the work listed and the estimate I find it reasonable that the quote accurately reflects the companies estimate of the work.
11. The applicant also asks for the cost of a protective coat on the fence, which he says was applied to the damaged fence. No information was provided about the costs of a protective coat.

12. The applicant is entitled to be put in the position he would have been in had the damage not occurred. I must also consider the applicant's duty to mitigate his damages. Given the quote obtained on June 16, 2018 details the work required and provides a reasonable estimate of the cost, I find an order for \$2,504.25 is appropriate for the fence replacement claim.
13. I make no order regarding the protective coat for the fence as no information was provided that would allow me to assess the cost.
14. In accordance with section 49 of the Act, the tribunal's rules, and the respondent's agreement, I find the applicant is entitled to reimbursement of his \$125 in tribunal fees. I make no order for pre-judgment interest, as the applicant has not yet incurred any expense.

## **ORDERS**

15. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,629.25, broken down as follows:
  - a) \$2,504.25 for the fence replacement claim, and
  - b) \$125 for tribunal fees.
16. The applicant is entitled to post-judgment interest, as applicable.
17. 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.
18. 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.

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Megan Volk, Tribunal Member