



Civil Resolution Tribunal

Date Issued: December 3, 2018

File: SC-2018-00630

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Furnell et al v. Doug Bensley dba Smoother Movers*, 2018 BCCRT 793

B E T W E E N :

Patricia Furnell and Charles Furnell

APPLICANTS

A N D :

Doug Bensley doing business as Smoother Movers

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Helene Walford

INTRODUCTION

1. The applicants Patricia and Charles Furnell hired the respondent Doug Bensley doing business as Smoother Movers' company to move some of their household goods from Maple Ridge to Prince George. The applicants allege that the respondent's employees damaged some of their furniture and seek \$3,471.99 as

compensation. The applicants also seek \$1,000 for mental anguish and \$490 for reimbursement of insurance costs. The respondent denies that its employees damaged the applicants' furniture.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. The respondent says that the tribunal does not have jurisdiction over this matter as his company is federally regulated and operates historically and continuously extra-provincially as a federal undertaking. The respondent says that his business falls exclusively under federal jurisdiction under s.92(10) of the *Constitution Act, 1867* (*Constitution Act*). The respondent relies on the case of *Chaudhary v. Smoothers Movers*, 2009 BCHRT 111 ("*Chaudhary*") in which the British Columbia Human Rights Tribunal (HRT) declined to hear a complaint against the respondent on the basis that it did not have jurisdiction.
5. With respect to the HRT there is a federal body, the Canadian Human Rights Commission, that would govern disputes such as in *Chaudhary*, but that is not the case with the small claims damages disputes. Section 3.1 of the Act, states that the tribunal has jurisdiction to resolve small claims damages disputes of \$5,000 and under. Neither section 92(1) of the *Constitution Act* or any other statute remove the tribunal's jurisdiction to resolve these types of small claims disputes, even if the business regularly operates extra-provincially.

6. 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.
7. 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.
8. 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

9. The issues in this dispute are:
 - a. Did the respondent's employees damage some of the applicants' furniture and if so, to what extent must the respondent pay the claimed damages?
 - b. Are the applicants entitled to reimbursement of their insurance costs?
 - c. Are the applicants entitled to damages for mental anguish?

EVIDENCE AND ANALYSIS

10. On November 19, 2016, the respondent provided an estimate for the moving costs in the amount of \$4,919.75, which includes an insurance amount of \$490. The respondent's invoice number 29232 dated December 28, 2016 and signed by the

applicant Patricia Furnell, also known as Nadine Furnell, indicates that the respondent would move the applicants' belongings from Maple Ridge to Prince George for a flat rate of \$4,919.75 plus tax of \$245.99 for a total of \$5,165.74 (the invoice). The belongings were picked up and moved on December 28, 2016.

11. The applicants provided a cheque for payment of the invoice, but by email dated January 3, 2017 at 9:34 am the applicants notified the respondent of their concerns and that they had put a stop payment on their cheque. The applicants indicated that they were prepared to pay 50% of the quoted price, or \$2,600.
12. The applicants say that the respondent's employees damaged their bedroom set, broke a foot/leg off their tall boy dresser (dresser) when it was moved up the stairs, threw boxes around, and that electronic items such as their computer and camera were found in wet boxes. The applicants say that the movers did not properly wrap their furniture or use moving blankets to prevent damage.
13. On January 3, 2017 at 2:44 pm the applicants sent another email to the respondent indicating that they would pay \$4,607.25, being the invoice amount less the moving bags that the applicants say were not used, and the contingency labour amount of \$262.50.
14. By emails dated January 23, 2017 the applicants notified the respondent of further damages including damage to their bedroom suite and damage to one of the drawer locking/sliding mechanisms. The applicants say that they had a furniture repairer look at the damaged bedroom suite and were told that the damage was so extensive it would cost more to repair the damage than to purchase a new suite. The applicants asked the respondent to have its insurance company contact them as they had paid for insurance coverage. The applicants filed photographs of the drawer slide and the bedroom suite, showing various scratches and dents to the bedroom suite.
15. The applicants filed a quote from Starratt Wood Works, undated, indicating that the damages to the bedroom suite consisted of numerous small dents, scratches,

marks and gouges (quote). The quote indicates that the bed has a drawer system under the frame and one of the drawer slides is broken. The quote says that because of the number and depth of the damages, they would still be noticeable after touch ups. The quote says that the proper repair of the furniture would be to strip the pieces, make the repairs, and then refinish the pieces, which would cost approximately \$3,600.

16. The applicants filed a delivery receipt from Ashley Furniture dated March 3, 2014 showing the cost of the bedroom suite of \$2,901.89. The applicants provided an email from Ashley HomeStore dated April 24, 2017 advising that the cost to replace the bedroom suite would be \$2,999.99 plus taxes.
17. The respondent filed statements from its employees Kevin Carson and David Walcer. The respondent agrees that a leg on the dress fell off when it was being carried upstairs but that the applicant Charles Furnell said he could glue it back on. Mr. Walcer says that they had wrapped all furniture with shrink wrap and moving blankets and that the bedroom suite was shrink wrapped for protection and to avoid the drawers coming out. The respondent filed pictures showing the applicants' furniture in the moving truck with several moving blankets on the belongings.
18. Mr. Walcer says that he used to work in a cabinet shop installing cabinets and he is familiar with the drawer slides. Mr. Walcer says that the drawer slide was not broken during the move. Mr. Walcer suggests that the person putting the drawer slides back together may have damaged it.
19. The onus and burden of proof is on the person claiming a loss. This means that the applicants have to prove liability and damages on a balance of probabilities. Although the applicants filed photographs showing some scratches and dents to the bedroom suite, the applicants admit, in their email of January 3, 2017, that the bedroom suite was shrink wrapped, and the respondent's photographs show that the movers used numerous moving blankets to protect the furniture.

20. Although the applicants' letter to the respondent dated March 2, 2017 indicates that there were three witnesses who watched the movers toss their belongings and boxes in a very rough and rude manner and with disregard for any damage they were causing, the applicants have not provided any witness statements supporting these statements.
21. Although the applicants say that their bedroom suite was in excellent condition, they did not file any photographs or other evidence showing the bedroom suite's condition before the move.
22. I find that the applicants have not proven, on a balance of probabilities, that the respondent's employees caused the damage to their bedroom suite. I dismiss the applicants' claim for compensation for damage to their bedroom suite.
23. The respondent admits that the foot/leg of the dresser came off during the move. Although there are no quotes for the cost of this repair, I accept the respondent's evidence that the foot/leg could have been put back on for minimal time and expense as the mover indicated that it could be glued on.
24. The applicants paid \$4,607.25 rather than the invoice amount of \$5,165.74. The deductions made by the applicants were not agreed to by the respondent and I find that the invoice deductions clearly cover the respondent's maximum liability under the invoice for the broken leg.

Reimbursement of insurance Costs

25. The applicants seek reimbursement of their insurance costs. The Smooth Movers estimate and invoice for moving costs includes insurance at a cost of \$490.
26. As I found that the applicants have not proven, on balance of probabilities, that the respondent is responsible for any damages to the applicants' bedroom suite, I find that the applicants are not entitled to reimbursement for the insurance costs of \$490.

Damages for Mental Stress

27. The applicants claim \$1,000 for mental stress and anguish. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, which I find helpful although it is not a binding precedent, damages for mental distress are only awarded where there is independent evidence of harm. As the applicants have not filed any medical evidence establishing that they have suffered any mental consequences as a result of the respondent's actions, this aspect of their claim must be dismissed.
28. The applicants did not provide any medical evidence to support their claim. I have also found that the applicants have not proven significant damage to their belongings. For these reasons, I therefore dismiss their claim for damages for mental stress.
29. The applicants were not successful. Under section 49 of the Act, and tribunal rules, I find that the applicants are not entitled to reimbursement of any tribunal fees.

ORDER

30. I dismiss the applicants' dispute.

Helene Walford, Tribunal Member