



# Civil Resolution Tribunal

Date Issued: December 27, 2018

File: SC-2017-006927

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Canada Way Limited Partnership v. Clearbrook Medicare Company Ltd*,  
2018 BCCRT 904

B E T W E E N :

Canada Way Limited Partnership

**APPLICANT**

A N D :

Clearbrook Medicare Company Ltd

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This dispute is about payment for cleaning services.
2. The applicant, Canada Way Limited Partnership, provided cleaning services to the respondent, Clearbrook Medicare Company Ltd. The applicant says the respondent

failed to pay for cleaning work performed in May and June 2017, and seeks an order for payment of \$1,130.51.

3. The respondent denies liability for the claim. It says it withheld payment because the cleaning was substandard, and the cleaners did not work for the amount of time billed.
4. The applicant is represented by its principal, Tim Cramer. The respondent is also represented by its principal, Thomas Konkin.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
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: 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**

9. The issue in this dispute is whether the respondent must pay the applicant's outstanding invoices, totalling \$1,130.51.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Mr. Cramer, on behalf of the applicant, says the applicant provided cleaning services for the respondent's medical offices for over 3.5 years. He says the medical practice closed on June 24, 2017, and that the respondent did not pay the final invoices for cleaning services in May and June 2017. These facts are not disputed.
12. Mr. Cramer says the respondent never raised any issues or displeasure with the cleaning services until November 7, 2017, long after the payment due dates had passed.
13. Dr. Konkin, on behalf of the respondent, says the cleaners did not spend enough time at the premises to do the contracted work. He says notes were left for the cleaners, but these were ignored. He also says the applicant's time sheets were false, as the records from the respondent's alarm company showed that the cleaners were not present for the claimed times.

14. The respondent did not provide any evidence to support these assertions. Dr. Konkin says he cannot find his files, and they may have been sent away for long term storage. Without such corroborating evidence, I am not persuaded by Dr. Konkin's assertions of inadequate work, notes left for cleaners, or falsified billings. There is no evidence to confirm these assertions, and as noted by the applicant, the documents indicate that the concerns were not raised until November 7, 2017, over 4 months after the last service was performed.
15. The applicant and the respondent had a written contract setting out the terms of the cleaning services, including the fixed monthly rate. The respondent was not paying a variable rate based on hours worked. If Dr. Konkin had ongoing concerns about applicant's work and billing, as he says, he was required under that contract to raise these with the applicant, rather than simply withholding payment without communication. In making this finding, I place particular weight on the May 31, 2017 email from the respondent's employee to the applicant, which specifically asked for the applicant to continue its cleaning services until the office's final closure on June 24, 2017. The respondent has not provided any evidence to support its claim that the applicant did not perform this work, so I find the respondent must pay the rate set out in the contract.
16. I find the applicant has met the burden of proving its claim for \$1,130.51, based on the service agreement, invoices, and service logs provided in evidence. I order the respondent to pay this amount. The parties' contract does not specify an interest rate for late payments, so I find the applicant is entitled to pre-judgment interest based on the rates set out in the *Court Order Interest Act* (COIA), from July 24, 2017.
17. 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, so I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

## ORDERS

18. I order that within 30 days of the date of this order, the respondent pay the applicant a total of \$1,273.73, broken down as follows:
  - a. \$1,130.51 as payment of outstanding invoices,
  - b. \$18.22 in pre-judgment interest under the COIA, and
  - c. \$125 for tribunal fees.
19. The applicant is entitled to post-judgment interest, as applicable.
20. 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.
21. 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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Kate Campbell, Tribunal Member