



Civil Resolution Tribunal

Date Issued: January 3, 2019

File: SC-2018-005468

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stenson v. Watson*, 2019 BCCRT 8

B E T W E E N :

Marjorie Stenson

APPLICANT

A N D :

Mac Watson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Marjorie Stenson says the respondent, Mac Watson, poorly constructed her fence in August 2017. She says the fence became unstable within

months and by January 2018 needed to be removed. The applicant seeks a \$2,475 refund for the fence.

2. The respondent denies using improper construction techniques when he built the fence. The parties are each 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 118 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 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.
5. 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.

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.

ISSUE

7. The issue in this dispute is whether the respondent breached the parties' agreement by building a structurally inadequate fence, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. 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 submissions below as necessary to explain my decision.
9. The applicant hired the respondent to build a 6 section, 6 foot high wooden fence on her property. The respondent completed the fence on August 29, 2017 and the applicant paid \$2,475 for it. It is undisputed that the fence built by the respondent failed.
10. On December 9, 2017, the applicant contacted the respondent to say that the post at one end had started to separate from the last panel. The applicant says the respondent told her nothing could be done until spring. I accept this evidence, which is undisputed. Although it is not explained in the evidence before me, I infer the need to wait until spring relates to the ground being frozen.
11. The applicant says the warping of the boards became evident after the post's separation. The applicant says that on January 18, 2018, the entire fence panel at that end fell to the ground. Again, I accept this undisputed evidence.
12. The applicant says that by spring, most of the posts were loose in the ground, and another panel was out of position and close to falling off. She says the post at the opposite end had come loose and was angling away from the fence. The applicant's

photos in evidence support her position. The respondent does not deny the fence failed.

13. The applicant says that on April 23, 2018, the respondent viewed the fence and offered to fix it by screwing back the fallen and loose panels and straightening the post at the one end. However, the applicant felt the entire fence had been compromised because a number of the posts were loose and the 2 end posts were no longer in an upright position. The applicant says the entire fence required a complete re-build, because of the “major issue” of the posts’ instability that she says is the foundation of a stable fence. Since the applicant did not want a repeat of the same problems, she felt it would be best to remove the entire fence.
14. The applicant says the respondent hired one man to take the fence apart and he did so in only a couple of hours. The applicant says the fence posts were easily pulled from the ground, clean of any cement. This is undisputed. The applicant says she had to hire someone else to build a new fence.
15. The applicant says the respondent’s fence construction was not structurally sound due to 3 issues: posts, cement, and paint. She says the posts were not set deep enough into the ground, and that her new contractor had to dig down to 2 feet, which she says is the standard depth for a 6 foot high fence. The applicant says the concrete preparation was incorrect, because it was put into the hole dry, and then water added with a hose. The concrete mix instructions support the applicant’s position. The respondent’s only submission was that this method is correct and he has been doing it that way for years. The applicant says the amount of one bag of cement mix per post hole was also insufficient, and that her new contractor used 3 bags per hole and mixed it with water before adding it to the post holes. Finally, the applicant says the respondent painted only one side of the fence, leaving the remaining parts open to the weather.
16. On balance, I find the evidence supports the applicant’s position that the respondent’s fence construction was inadequate. This evidence includes photos and a witness statement about the fence condition. I find an implicit term is that the

fence would be reasonably durable and not collapse within a few months after installation.

17. In the Dispute Response filed at the outset of this tribunal proceeding, the respondent blamed poor weather for the fence failure. However, the fence was built in August, in the summer. The fence should have been able to withstand the winter months that came 4 months later. The respondent provided no evidence to support a conclusion that he warned the applicant that the fence could fail at the time it was built, nor any evidence that poor weather was to blame. I reject that suggestion.
18. The next issue then is whether the applicant's decision to have the respondent remove the fence entirely was reasonable. The respondent provided a statement from DS, the worker he hired to remove the fence in April 2018. DS stated that he told the applicant there was no reason to remove the fence, and that other than some over-tightened screws breaking and causing a weakness at a few joints in the boards, leading to some "minor warping", the fence was structurally sound and "could easily be repaired". DS wrote that the applicant disagreed and that she did not "like" the fence and wanted it removed. DS confirmed the applicant's evidence that the fence panels were easily removed. DS stated that the "majority" of the job time was spent removing the posts that he says were cemented in the ground about 3 feet, which is proper for a 6 foot high fence. DS does not say how long the job time was and the respondent did not dispute that the fence was removed within a couple of hours. The applicant's photos show however that some of the posts had a depth of less than 3 feet.
19. On balance, I find the applicant reasonably decided to have the fence removed and completely replaced. The respondent has for the most part not addressed the applicant's concerns, and as noted, the evidence is that the fence had largely collapsed. I also find the weight of the evidence supports the applicant's position about the post stability and the respondent's evidence suggests he would have rebuilt the fence the same way. I also note the respondent re-used the lumber from

the applicant's fence for another project, though I acknowledge he says he gave that other customer a discount for "used" lumber.

20. Given my conclusions above, I find the applicant is entitled to a refund of \$2,475, which is what she paid for the fence on August 29, 2017. She is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from that date.
21. The applicant was successful. In accordance with the Act and the tribunal rules, I find she is entitled to reimbursement of \$125 in tribunal fees \$11.34 in dispute-related expenses for serving the Dispute Notice by registered mail on the respondent.

ORDERS

22. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,650.21, broken down as follows:
 - a. \$2,475 as a refund under the parties' fence agreement,
 - b. \$38.84 in pre-judgment interest under the COIA, and
 - c. \$136.34, as \$125 in tribunal fees and \$11.34 in dispute-related expenses.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Shelley Lopez, Vice Chair