



Civil Resolution Tribunal

Date Issued: January 25, 2019

File: SC-2018-002758

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wes Tomlinson (Doing Business As Accent Moving & Storage) v. SPARKLE SOLUTIONS CORP.*, 2019 BCCRT 101

B E T W E E N :

Wes Tomlinson (Doing Business As Accent Moving & Storage)

APPLICANT

A N D :

SPARKLE SOLUTIONS CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about payment for storage and freight charges. The applicant, Wes Tomlinson (Doing Business As Accent Moving & Storage), asks for \$2,610.29 for the storage and delivery of materials. The applicant represented himself. The respondent, Sparkle Solutions Corp. is represented by an employee or principal.

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 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 relationships between parties that may continue after the dispute resolution process has ended.
3. 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.
4. 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.
5. 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

6. The issue in this dispute is whether the respondent owes the applicant payment for storage and freight charges.

EVIDENCE AND ANALYSIS

7. The applicant bears the burden of proof for the claim on a balance of probabilities. I refer only to the relevant evidence necessary to give context to my decision.

8. It is undisputed that the respondent hired the applicant to store 68 units for 1 week and to make 3 freight deliveries. This dispute arises from an incorrect delivery where the applicant took the wrong freight for scrapping. The parties disagree about who caused the error. Central to the dispute is what instructions the applicant's drivers received from the respondent's staff.
9. Given the burden, I find the applicant has not proved delivery of the destroyed freight as agreed. On the applicant's own evidence there was no written documentation about the freight delivery or a bill of lading. Neither party provided statements from those present when the instructions were given.
10. A few days after the last delivery the applicant invoiced the respondent \$2,486 before taxes for the storage and deliveries. The respondent did not pay the invoice.
11. The invoice itemized \$760.00 for the incorrect delivery. It is undisputed that the rest of the invoice is for work completed without complaint from the respondent. I find that the respondent must pay the remaining \$1,726 plus GST.
12. The respondent says the applicant caused \$15,000 in damage by taking the wrong freight for scrapping. The respondent did not file a counterclaim, which would, in any event, be limited by the tribunal's \$5,000 monetary limit for small claims. However, I find the claim is sufficiently connected such that those damages, if proven, may be set-off against anything reasonably owing under the applicant's invoice (see *Wilson v. Fotsch*, 2010 BCCA 226 for a description of the criteria for equitable set-off).
13. However, I find the respondent did not prove the damages it claims. The respondent provided no evidence detailing or valuing the lost freight. Without evidence to assess damages, I dismiss that claim.
14. 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. Given the applicant was substantially successful, I see no reason in this case not to follow that general rule and award reimbursement of

\$125.00 in tribunal fees, as claimed. I find the applicant is also entitled to reimbursement of \$24.26 in dispute-related expenses.

ORDERS

15. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$2,007.12, broken down as follows:
 - a. \$1,726 plus GST (\$86.30) for storage and deliveries by the applicant,
 - b. \$45.56 in pre-judgment interest on \$1,726 under the *Court Order Interest Act* calculated from April 19, 2016,
 - c. \$125 in tribunal fees, and
 - d. \$24.26 in dispute-related expenses.
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.

Megan Volk, Tribunal Member

