



# Civil Resolution Tribunal

Date Issued: January 23, 2019

File: SC-2018-000257

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Altima Falling LTD v. DICKSON TIMBER LTD*, 2019 BCCRT 94

Default decision – non-compliance

BETWEEN:

Altima Falling LTD

**APPLICANT**

AND:

DICKSON TIMBER LTD.

**RESPONDENT**

AND:

Altima Falling LTD

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the applicant, and respondent by counterclaim, Altima Falling LTD (Altima), due to its non-compliance with the tribunal's directions as required, as discussed below.
2. This dispute is about tree falling services that were provided but not paid for. Altima claimed the respondent Dickson Timber Ltd. (Dickson) owes it \$3,700 in unpaid wages and \$425 in equipment costs, for work done in spring and summer 2017.
3. In its February 2, 2018 Dispute Response, Dickson says it held back earnings to cover the cost of items Altima removed from the rental house while completing the 2017 falling work.
4. Dickson counterclaims saying one of Altima's workers took valuable artifacts from the home Dickson had rented to accommodate them during the falling work (rental home), causing Dickson to be evicted. Dickson counterclaims for \$5,000 for lost rent and accommodation costs for the balance of July 2017. Dickson also asks that Altima return the remaining missing items to the owner of the rental home. Due to the tribunal's monetary limit, Dickson may only claim a maximum of \$5,000.
5. Altima did not file a Dispute Response to the counterclaim.
6. While it participated, Altima was represented by Tim Olsen. Dickson is represented by employee Charlene Felker.
7. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:

- a. Hear the dispute in accordance with any applicable rules.
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
8. The facilitator has referred the applicant's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve its dispute or dismiss it.
  9. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought section 118 of the 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.
  10. 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.
  11. For the reasons that follow, I have dismissed the applicant's claim and its dispute. As set out below, I have allowed Dickson's counterclaim in part.

## **ISSUES**

12. The first issue is whether, given Altima's failure to pay a required fee and other non-compliance, I should dismiss Altima's claims, or refuse to resolve them.
13. The second issue is whether I should hear Dickson's counterclaim, given Altima's non-compliance.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

14. My June 13, 2018 summary decision to hear the dispute without Altima's participation due to its non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.
15. The applicant is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the case manager to contact it with a request for a reply.
16. Under Rules 11 and 12, unless a fee waiver is obtained, the tribunal decision fee (TDF) must be paid before a claim can proceed to the tribunal hearing phase. In the tribunal hearing phase, the parties would have prepared evidence and submissions to be provided to a tribunal member to make a binding decision on the merits of the claim.
17. Altima's Dispute Notice was issued on January 17, 2018. It included Altima's email address and phone number to be used for this dispute. The Dispute Notice outlined Altima's claims for wages and equipment.
18. In its Dispute Response, Dickson argued that it withheld wages because Altima had taken items from the rental home. Dickson says some of the items were never returned, and that it lost rent, a damage deposit, and money it spent on hotel accommodations after the eviction.
19. This matter proceeded through facilitation. It was then referred for adjudication. The applicant first failed to respond to the facilitator, and then failed to pay the TDF.
20. The details of Altima's non-compliance are as follows:

- a. **April 26, 2018** – The case manager emailed Altima asking it to confirm that it had received an item returned to it by Dickson as part of the facilitation process. Altima did not respond.
  - b. **May 1, 2018** – The case manager emailed Altima asking it to pay the \$50 TDF. The email explained that if the TDF was not paid, the tribunal may dismiss the dispute or refuse to resolve it. The response was due by May 8, 2018. Altima did not respond or pay the TDF.
  - c. **May 10, 2018** – The case manager emailed Altima with a warning that, if it failed to respond and to pay the TDF, this dispute would be referred to a tribunal member for a decision without its further participation. The email explained that the decision may include dismissal of Altima’s claim. The deadline for paying the TDF was May 14, 2018. Altima did not respond or pay the TDF.
  - d. **May 18, 2018** – The case manager spoke to Mr. Olsen by telephone and he said that he wanted to proceed with his dispute and would pay the TDF by Tuesday May 23, 2018. He confirmed he had received the item returned by Dickson. The case manager explained that if the TDF was not paid, the dispute would be referred to a tribunal member for a decision without Altima’s further participation. Altima did not pay the TDF.
21. The case manager then referred the matter of the Altima’s non-compliance with the tribunal’s rules to me for a decision as to whether I should hear the dispute without the Altima’s participation.

***Should the tribunal dismiss Altima’s claims or refuse to resolve them?***

22. The key difference between a dismissal order and a refusal to resolve under section 36 of the Act is that, subject to cancellation, dismissed disputes may not be re-filed with the tribunal, another tribunal or a court at a later date. Claims or disputes that the tribunal refuses to resolve may be re-filed with leave of the tribunal, subject to any applicable limitation period.

23. As referenced above, Altima provided no explanation about why it failed to pay the required TDF. I find that the case manager informed the applicant by telephone of the need to pay the TDF and the consequences of non-payment, including dismissal of the dispute.
24. The tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from Altima.
25. I find that in the circumstances of this case, it is appropriate to dismiss the applicant's dispute. Although it is not a binding precedent, I agree with the tribunal's reasoning in *Grand-Clement v. The Owners, Strata Plan, KAS 2467*, 2017 BCCRT 45 that it is problematic to force an unwilling applicant to pursue a dispute with the tribunal. I agree that to do so would go against the mandate of the tribunal and impair the fairness of the process by creating an imbalance of the tribunal's fact finding and decision-making functions.
26. If I refuse to resolve the claim, there would be no finality to this dispute as it would be open to Altima to make a further request for tribunal resolution, subject to any limitation period. I find that would be unfair to the Dickson.
27. For these reasons, I dismiss the Altima's claims.

### **Counterclaim**

28. Altima did not file a Dispute Response in the counterclaim. Based on the evidence that it was provided with the Dispute Notice in the counterclaim, I find Altima knew about need to file the Dispute Response and failed to do so. I find that Altima is in default.
29. Liability is assumed when a respondent has failed to provide any response to a dispute and is in default.

30. Parts of the counterclaim are non-debt, meaning that the amount owing has not been agreed to or determined. While I have assumed Altima is liable due to the default, Dickson must provide evidence to support any non-debt claims.
31. Dickson claims \$5,000 for lost rent, damage deposit and hotel costs, and \$175.00 in tribunal fees.
32. I accept the evidence of Dickson's employees as follows:
  - a. Altima's falling contractors stayed in the rental home from May to July 2017.
  - b. The eviction from the rental home in July 2017 was caused by Mr. Olsen having wrongly removed valuable items from it.
  - c. Mr. Olsen returned some of the items on July 10, 2017 and another car load at a later date. The items included masks, hats, blankets, clothing and baskets.
  - d. Some items missing from the rental home were not returned.
  - e. When it was evicted, Dickson lost its rent for July 2017, at \$2,500, and the \$1,250 damage deposit.
33. I was not provided with the date of eviction but find that the workers were still living at the rental home until at least July 15, 2017. I say this because Dickson's employee mentions the eviction occurring after Mr. Olson returned one carload of items on July 10, and a second carload at a later date.
34. Based on this evidence, I find that Dickson had the benefit of half a month of accommodation at the rental house in July 2017, prior to the eviction. I allow the claims for lost rent for half of July 2017 (\$1,250) and the unreturned damage deposit at \$1,250. This totals \$2,500.
35. Dickson did not provide details of its hotel costs for the balance of July 2017, except to say it paid \$75.00 per night for 4 people. I was not provided the date of eviction,

or a receipt for the hotel costs. Given the lack of evidence for this non-debt aspect of the claim, I dismiss it.

36. I order Altima to pay Dickson \$2,500.00, within 10 days of this decision.

37. I do not order Altima to return any remaining removed items from the rental home. That issue is between Mr. Olsen and the owner of the removed property, who is not a party to the counterclaim. As well, there is no evidence that Dickson was held responsible for the value of the missing items, nor evidence that would permit me to set their value. Rather, Dickson's claims arise from the resulting eviction.



## ORDERS

38. I dismiss Altima's claims and its dispute, for non-compliance.
39. Within 10 days of the date of this order, I order Altima to pay Dickson a total of \$2,669.06 broken down as follows:
- a. \$2,500.00 as reimbursement for lost rent for ½ of July 2017 and the damage deposit,
  - b. \$44.06 in pre-judgment interest under the *Court Order Interest Act*, from July 15, 2017 to the date of this decision, and
  - c. \$125.00 in tribunal fees.
40. Dickson is entitled to post-judgment interest, as applicable.
41. 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. 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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Julie K. Gibson, Tribunal Member