



Civil Resolution Tribunal

Date Issued: February 25, 2019

File: SC-2018-003759

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brewer v. Lea et al*, 2019 BCCRT 224

B E T W E E N :

Darryl Brewer

APPLICANT

A N D :

Myrna Lea

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Darryl Brewer says the corner pin to his property was removed by the respondent Myrna Lea when she installed a fence between his property and hers. The applicant seeks \$1,816.50, which he says is the cost to have a surveyor replace the pin.

2. The respondent Myrna Lea filed a Dispute Response on June 19, 2018. She denies liability for the cost of the survey. Her daughter, Dixie Lee Keyser, was originally named as a respondent, but later removed from the dispute at the applicant's request. I amended the style of cause accordingly.

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. 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.
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 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

7. The issue in this dispute is whether the applicant is entitled to be reimbursed by the respondent for the cost of the land survey he had conducted in early 2018.

EVIDENCE AND ANALYSIS

8. In November 2017, the respondent had a handyman install a fence between her property and the property later purchased by the applicant.
9. In early 2018, the applicant and his wife purchased a lot in Keremeos, BC, next to the respondent's lot. This purchase was made after the property boundary pin had been removed. I have no evidence about whether the absence of the property boundary pin was discussed or disclosed during the sale of the property.
10. The respondent says she hired a contractor to construct a fence but did not authorize him to remove any property pins. In her Dispute Response, she agrees that what she describes as a "metal bar" was removed by the fencing contractor but suggests she did not know what it was. In submissions, she denies that any property line pin was removed.
11. Given the inconsistency in Ms. Lea's evidence, I prefer the evidence of the applicant, which is consistent with a report from his surveyor, and find that one property boundary pin, on the applicant's lot, was removed by the respondent's fencing contractor, probably during installation of the fence.
12. The applicant says that when confirming boundaries on his lot, he discovered that one survey pin was missing. He assessed that the pin had been removed to accommodate a fence post.
13. On May 28, 2018, a surveyor hired by the applicant reported that it was "most likely the fence construction that destroyed the property corner pin", and that 2 out of 16 total fence posts from the fence installed by the respondent are encroaching over the line onto the applicant's property.

14. The surveyor reinstalled the pin.
15. In *Graham v. Golden Gate Developments Inc.*, 2013 BCSC 1890 (CanLII) both parties claimed to recover costs of their fence surveys, in a situation where they were trying to confirm the correct boundary line to deal with a neighbourly dispute involving fence placement. The Court declined to order the remedy because neither neighbor “improperly caused the incurring” of the survey expenses.
16. The applicant’s claim is in debt for the cost of the survey. I have found that the property pin was removed by the respondent’s contractor. I find that the fence installation was authorized by the respondent. For this reason, I find that the respondent is responsible for the need to re-place the applicant’s property line pin, on a balance of probabilities.
17. I allow the applicant’s claim for the \$1,816.50 for the survey work needed to replace the pin in its appropriate location. I order the respondent to pay the applicant the \$1,816.50, plus interest of \$20.03, under the *Court Order Interest Act (COIA)* from May 28, 2018, the date of invoice for the survey work, to the date of this decision.
18. 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 order the respondent to pay the applicant \$125 for tribunal fees and \$135.20 for dispute-related expenses, which were supported by receipts and which I find reasonable.

ORDERS

19. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,096.73, broken down as follows:
 - a. \$1,816.50 as reimbursement for the survey work,
 - b. \$20.03 in pre-judgment interest under the *COIA*, and
 - c. \$260.20 for \$125 in tribunal fees and \$135.20 for dispute-related expenses.

20. The applicant is entitled to post-judgment interest, as applicable.
21. 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.
22. 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.

Julie K. Gibson, Tribunal Member