



Civil Resolution Tribunal

Date Issued: February 26, 2019

File: SC-2018-005879

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MAPLE LEAF DISPOSAL LTD v. JTS FOOD CORPORATION*,
2019 BCCRT 226

B E T W E E N :

MAPLE LEAF DISPOSAL LTD

APPLICANT

A N D :

JTS FOOD CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant MAPLE LEAF DISPOSAL LTD says the respondent JTS FOOD CORPORATION signed a two-year contract with it for waste disposal services, only to try to cancel two weeks later, contrary to the cancellation requirements under the contract.

2. The applicant seeks payment of the \$2,446.50 “buy out” under the contract.
3. The respondent says it was under contract with another provider who had a right to renegotiate that precluded the contract with the applicant. The respondent says it notified the applicant that it would be using its existing provider, via registered mail letter dated March 16, 2018.
4. The respondent is represented by principal or employee Joyal Pararajasingam.

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 118 of the *Civil Resolution Tribunal 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. 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.
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 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

- 9. The issue in this dispute is whether the respondent owes the applicant money for breaking the contract between them.

EVIDENCE AND ANALYSIS

- 10. On February 27, 2018, the respondent's owner signed a customer service agreement (contract) for the applicant to provide waste and organic waste removal for a building on Burrows Road in Richmond.
- 11. Clause 11 of the contract requires a customer, who terminates the contract prior to the expiration of any term, but where service has yet to be provided, to pay liquidated damages equal to 50% of the projected billing for the first month of service multiplied by the number of months in the current term of the contract.
- 12. The 2-year contract is for waste and organic service at \$180/month. The contract also specifies a one-time delivery fee of \$85/each for two bins, or \$170 total. The contract does not specify a removal fee for the bins.
- 13. The contract may only be terminated by the customer between 90 and 180 days before the end of the term, by written notice by registered mail to the applicant. It is undisputed that the respondent did not cancel the contract as provided in the termination clause.
- 14. On February 27, 2018, the respondent's owner wrote to Revolution Resource Recovery Inc. (RRR) to cancel the respondent's existing service contract with it, which was set to expire on March 27, 2018.

15. On March 16, 2018, the respondent wrote to the applicant indicating that it did not want to continue the contract because it was under a service agreement with RRR. The respondent cited a “Right to Negotiate” provision between it and RRR as the reason it would not need the applicant’s services. The letter specified that the applicant should not place a container at the applicant’s building.
16. The applicant received the March 16, 2018 letter on March 20, 2018.
17. In August 2018, despite being aware that the respondent did not want its services, the applicant attempted delivery of bins at the applicant’s address, which were refused. As part of their claim, the applicant says it is “out the costs of delivery, removal and relabeling of the bin(s).”
18. The respondent provided no defence to the contractual obligation upon it to pay the liquidated damages as laid out in clause 11 of the contract. The fact that the respondent may have had another agreement with RRR does not excuse it from its obligations to the applicant under the contract.
19. I find the respondent must pay the applicant the amount of the liquidated damages clause, which is 50% of the projected billing for the first month of service (\$180/2, or \$90), multiplied by 24 months, for a total of \$2,160. The applicant claimed GST on this amount. I dismiss the GST aspect of the claim because these are liquidated damages. No service was provided.
20. The applicant also claims a fee for placement of the bins at \$178.50 (\$170 plus GST). I dismiss this claim because the applicant knew the respondent did not want bins delivered but proceeded to deliver them anyway. The applicant caused its own loss with regard the bin placement.
21. I order the respondent to pay the applicant the claimed \$2,160.
22. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$94.08 in dispute-related expenses for which receipts were provided and which I find reasonable.

ORDERS

23. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,408.77, broken down as follows:

- a. \$2,160 as the amount of liquidated damages under Clause 11 of the contract,
- b. \$29.69 in pre-judgment interest, from March 16, 2018 to the date of this decision, under the *Court Order Interest Act*, and
- c. \$219.08 for \$125 in tribunal fees and \$94.08 for dispute-related expenses.

24. The applicant is entitled to post-judgment interest, as applicable.

25. 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.

26. 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