



# Civil Resolution Tribunal

Date Issued: March 5, 2019

File: SC-2018-004915

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MC FREIGHT SYSTMES v. AVS WINDOWS LTD*, 2019 BCCRT 261

B E T W E E N :

MC FREIGHT SYSTMES

**APPLICANT**

A N D :

AVS WINDOWS LTD

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The applicant MC Freight Systems is a freight logistics company. The applicant says the respondent AVS Windows Ltd hired it to contract a carrier to ship some doors and other supplies. The applicant says the doors arrived, but the respondent failed to pay \$925.45 for the applicant's services.

2. The respondent says the doors were damaged during shipping. The respondent says they contracted with the applicant to send the materials safely, and they failed to do so. The respondent says it had to order and pay for new doors. The respondent asks that the dispute be dismissed.
3. The applicant is represented by principal or employee Gillian Davies-Sall. The respondent is represented by Jasminder Kalirai.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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.

## **ISSUE**

8. The issue in this dispute is whether the respondent failed to pay an invoice owing by the respondent for shipping logistics services that were provided.

## **EVIDENCE AND ANALYSIS**

9. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to it here as necessary to explain my decision.
10. On December 11, 2015, the applicant was hired by the respondent to arrange shipping of materials from a hardware store in Burnaby, BC to a hotel in Thornhill, BC.
11. The applicant arranged for the shipping service to be supplied by a third-party carrier.
12. The shipment was completed, but with 5 doors delivered damaged. The photographs filed in evidence show the damage to the doors.
13. On December 31, 2015, the applicant invoiced the respondent \$1,223.33 for its freight delivery services.
14. On January 13, 2016, the respondent wrote to the applicant claiming \$1,607.82 plus delivery costs for the set of doors it had to order to replace those damaged. The respondent attached
  - a. a November 2015 invoice for the original product, which was part of a shipment valued at about \$7,000, and
  - b. an invoice for the replacement windows.

15. On March 11, 2016, the applicant was informed that the respondent was making an insurance claim against the carrier for damage incurred during the shipment.
16. In late March 2016, CM, an employee of the applicant, emailed the respondent that the carrier's insurance underwriter wanted the supplier's invoice for the 5 damaged items.
17. On May 25, 2016, CM again emailed the respondent asking for the original invoice for the damaged products.
18. The carrier's insurer denied the claim. The applicant's emails shows that it thought the claim was denied because someone signed for the delivery.
19. The respondent wrote to the applicant explaining that, because the five doors were damaged, it had to order replacements at a cost of \$1,507. The invoice filed in evidence supports this valuation.
20. In October 2017, the applicant and respondent exchanged emails. The applicant said that if the respondent paid their invoices in full, they would then credit the respondent's account \$1,507.
21. I find that the applicant provided shipping logistics services to the respondent in early December 2015 at a cost of \$1,223.33. However, I also find that items in the shipment were damaged and had to be replaced at a cost of \$1,507 plus shipping. The replacement value exceeds the shipping cost.
22. I find that the applicant then promised to credit the respondent's account in the amount of \$1,507, if the respondent brought its account current. That is, the respondent has established that the applicant owes it money, not the other way around.
23. The applicant did not explain why claimed for \$925.45. In this disputed debt claim, I would need to see the credits and debits on the customer's account in order to hold the respondent responsible for an outstanding charge.

24. I was not provided any document to show what payments the respondent has made to the applicant, and what specifically, if anything, remains owing. The applicant also chose not to provide any reply submission to address the respondent's submissions about the damaged goods. In the circumstances, I find that the applicant has failed to establish its claim on a balance of probabilities.
25. 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. As the respondent paid no tribunal fees, I make no order in this regard. The applicant was unsuccessful, so I do not order any reimbursement of its tribunal fees.

## **ORDER**

26. I dismiss the applicant's claims and this dispute.

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Julie K. Gibson, Tribunal Member