



# Civil Resolution Tribunal

Date Issued: March 8, 2019

File: SC-2018-005222

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *687503 B.C. INC DBA Okanagan Containers v. R A Quality Homes Ltd.*,  
2019 BCCRT 288

B E T W E E N :

687503 B.C. INC DBA Okanagan Containers

**APPLICANT**

A N D :

R A Quality Homes Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

### INTRODUCTION

1. This is a dispute about a contract for rental equipment. The applicant, 687503 B.C. INC DBA Okanagan Containers, rented a container and 3 pairs of shelving brackets to R A Quality Homes Ltd. The applicant says the respondent damaged and lost 1 pair of shelving brackets, and it wants the respondent to pay it \$168 for the cost of

replacing them. The applicant also wants the respondent to pay it \$48.50 in administrative charges.

2. The respondent says it did not cause the damage to the shelving brackets and it is not responsible for paying the applicant to replace them. The respondent says it is not required to pay the applicant any administrative charges because there was no written contract stipulating such charges and it has now paid the applicant all outstanding rental fees.
3. Each party is represented by an employee or principal.

## **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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's

process and that oral hearings are not necessarily required where credibility is in issue.

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 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**

8. The issues in this dispute are:
  - a. Is the respondent required to pay the applicant \$168 to replace the shelving brackets?
  - b. Is the respondent required to pay the applicant \$48.50 in administrative charges?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I allow the applicant's claims in part.

***Is the respondent required to pay the applicant \$168 to replace the shelving brackets?***

11. The applicant wants the respondent to pay it \$168 for the cost of replacing a pair of shelving brackets it rented to the respondent and which were subsequently lost.
12. On April 30, 2016 the parties entered into an agreement for the applicant to rent the respondent a container and 3 pairs of shelving brackets. The written contract in evidence is dated April 30, 2016 (contract) which includes rental of 3 pairs of shelving brackets at \$15 each per month for a total of \$45 per month. The contract indicates the applicant would pick up the equipment on March 1, 2017, which I take to mean the contract was 1 year in duration.
13. It is undisputed that on May 2, 2016 the applicant delivered 3 pairs of shelving brackets to the respondent. It is undisputed that the respondent initially paid its rent every month, including the \$45 fee for the 3 shelving brackets.
14. On November 30, 2016, the respondent emailed the applicant stating that 1 pair of shelving brackets were bent, that they looked “like someone ran over them with truck,” and that the respondent received them from the applicant in that condition. However, in its submissions the respondent alleges the applicant may have damaged the shelving brackets in September 2016 when the applicant moved the container across the respondent’s property at the respondent’s request. The respondent says at that point it had not yet used the shelving brackets.
15. The respondent says the applicant should have replaced the damaged shelving brackets after its November 30, 2016 email and charged the respondent accordingly. Instead, the brackets remained damaged and the respondent says it continued paying the applicant monthly rental fees which included the \$45 fee for the shelving brackets. It is undisputed that the respondent made no further complaints about the damaged shelving brackets.
16. Evidently the parties’ contract was extended, although there is no documentation of that renewal in evidence. At some point over the course of 2017 and 2018 the

relationship between the parties broke down. On March 13, 2018 the applicant notified the respondent that it had an outstanding balance of \$294.20 for rental fees owing from July 2017, December 2017, and February 2018 as well as overdue charges.

17. After further communication between the parties, on March 14, 2018 the respondent told the applicant it would empty the container the following morning and that the applicant could pick up the container any time after 4:00 p.m. on March 15, 2018. On the same date the applicant reminded the respondent by email to leave the 3 pairs of shelving brackets in the container. The respondent submitted a statement from R.K. stating that he was responsible for unloading the container, that he left the steel shelving brackets inside, and that no brackets were taken out of the container or put aside.
18. On March 16, 2018 the applicant picked up the container and found only 2 pairs of shelving brackets, neither of which were damaged.
19. The applicant submitted a September 12, 2018 statement from T.K. on behalf of the respondent which states that he went through the storage shed at the respondent's place of business and did not find the missing shelving brackets, so they must have been taken by the applicant. T.K. said he looked at the area where the container was parked and did not find the missing shelving brackets. It is unclear how the applicant obtained this statement, or whether it is an excerpt from an email.
20. The applicant says the damaged shelving brackets were brand new when it delivered them to the respondent but provided no evidence to support this claim. It is undisputed that the shelving brackets were damaged as of November 30, 2016, but each party claims the other is responsible for the damage. Without more, I find the applicant has not established that the respondent damaged the shelving brackets. The applicant says the respondent lost the damaged shelving brackets, but the respondent says it put them inside the container when preparing it for pickup in March 2018. Again, without more, I am not satisfied the applicant has established that the respondent lost the shelving brackets. However, even if the applicant can

establish that the respondent is responsible for the damage and loss of the shelving brackets, it has submitted no evidence to support the claimed replacement cost of \$168. Nowhere in its submissions does the applicant explain how it arrived at \$168. I expect a receipt, quote, price list or some other documentation to have been readily available to the applicant, however no such evidence is before me. The applicant has the burden of proving its claim and I found it has not done so. I dismiss the applicant's claim for \$168.

***Is the respondent required to pay the applicant \$48.50 in administrative charges?***

21. The contract includes a list of terms and conditions, one of which states that payment is due on receipt of invoice, and that late payments are subject to a \$25 late charge. As discussed above, it appears the written contract in evidence ended on March 1, 2017. However, based on the evidence before me I find the parties continued operating under the terms of the contract until March 2018. The contract appears to be signed by a representative of the respondent. In its Dispute Response the respondent says there is no written agreement between the parties stipulating an administrative charge, however in its submissions it does not dispute the validity of the contract in evidence. In the circumstances I find the terms of the contract apply to the parties, and that the applicant was entitled to charge the applicant \$25 for late payment of rental fees.
22. The applicant says it sent the respondent an invoice on November 27, 2017 which it did not pay for over 60 days, and that on February 14, 2018 it applied the \$25 late charge to the respondent's account. The email correspondence in evidence supports this claim. It is undisputed that the respondent paid overdue rental fees in September or October 2018. I am satisfied the respondent was late paying at least one month's rental fees, and I find the applicant is entitled to payment of the \$25 late charge.
23. The applicant says on May 3, 2018 it applied a finance charge of \$23.50 to the respondent's account which it had suspended. However, the applicant does not explain what specifically this charge relates to, and the contract has no terms

relating to finance charges. I find there is insufficient evidence for the applicant to establish entitlement to the \$23.50 finance charge. I find the respondent must pay the applicant \$25. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* calculated from February 14, 2018.

24. 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. The applicant was only partially successful, however the respondent did not pay the applicant its outstanding rental fees until after the applicant filed this dispute. In the circumstances I find the applicant is entitled to reimbursement of half its tribunal fees for a total of \$62.50. The applicant claimed \$22.84 in dispute-related expenses for company searches. I find these expenses reasonable, and I find the applicant is entitled to half his dispute-related expenses for a total of \$11.42.

## **ORDERS**

25. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$99.30, broken down as follows:
- a. \$25 for late payment fees,
  - b. \$0.38 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$73.92 for \$62.50 in tribunal fees and \$11.42 for dispute-related expenses.
26. The applicant is entitled to post-judgment interest, as applicable.
27. 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.

28. 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.

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Sarah Orr, Tribunal Member