



Civil Resolution Tribunal

Date Issued: March 8, 2019

File: SC-2018-006671

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hall v. Monteith Moving and Storage Ltd.*, 2019 BCCRT 291

B E T W E E N :

William Kenneth Hall

APPLICANT

A N D :

Monteith Moving and Storage Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a claim for damages resulting from a residential move. The applicant, William Kenneth Hall, says that the respondent, Monteith Moving and Storage Ltd., damaged his home and some of his property during a move. He says that some of the items have been addressed, but he claims \$496.11 for damage to

a dried floral arrangement. The respondent says it has already compensated the applicant for the damaged items for which it is liable.

2. The applicant is self-represented. The respondent is represented by Peter Monteith.

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.

ISSUE

7. The issue in this dispute is whether the respondent must pay the applicant \$496.11 for damage during a residential move.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer only to that which is necessary to provide context to my decision.
9. The applicant contracted with the respondent for a residential move and purchased insurance coverage from it. During the estimate process, he advised the respondent that he was particularly concerned about the safe transport of some items, including a fragile dried floral arrangement. He says the respondent assured him that the arrangement would be “secured using a plastic wrap to ensure that the dry grasses of the arrangement were not damaged”. It is not clear if this occurred.
10. Unfortunately, during the move some items in the home were damaged, as well as some of the applicant’s possessions. The applicant says this damage included the floral arrangement and the vase that contained it. The applicant had the original creators of the arrangement repair it at a cost of \$496.11, and sought reimbursement for this amount, and other expenses, from the respondent.
11. In an August 21, 2018 letter, the respondent stated that the applicant’s claim would be settled for \$193 (after taking into account a \$100 deductible). The damage to the vase was covered. However, the respondent declined to provide coverage for the floral arrangement according to “Exception from Liability, Item C, Deterioration of or damage to perishable food, plants or pets”.
12. The applicant is of the view that this exception from liability does not apply to his floral arrangement. He notes that the list of items the respondent cannot move includes “plants” under the category of “perishables”. The applicant says that his

dried floral arrangement is not perishable, and therefore he is entitled to compensation from the respondent.

13. The respondent says that it has compensated the applicant for the damaged items for which it is liable. The respondent noted that, although its disclaimer provides that all damaged items must be made available to it for inspection and all repairs and replacements must be authorized and initiated by its office, the applicant arranged his own repairs. The respondent also submits that the applicant did not provide proof of damage to the arrangement.
14. While I accept that the respondent provided the applicant with the list of non-allowable items, I find that this list does not form part of the contract between the parties. I am satisfied that the whole of the contract is contained in the Bill of Lading signed by the parties. The Bill of Lading contains a schedule that sets out the conditions of carriage. One of the conditions is that the respondent is liable for loss or damage only as provided in the schedule. The schedule also sets out exceptions from liability, one of which being that the respondent is not liable for loss, damage or delay to various categories of items, including “deterioration of or damage to perishable food, plants or pets”. The Bill of Lading does not appear to contain the disclaimer described by the respondent.
15. I disagree with the applicant’s view that the presence of the word perishable means that his dried floral arrangement is not captured by the exclusion. I find that the word perishable modifies the word food, not the remaining words in the sentence (namely plants and pets). Given this wording, I find that all plant materials, and not simply perishable or live ones, are excluded from coverage.
16. Even if I am incorrect in my interpretation of the contractual language, I would not allow the applicant’s claim as I find that he has not proven that the arrangement was damaged by the respondent. The applicant submitted photos of the damaged vase but not the arrangement itself. The applicant says he did not take photos of the arrangement because it was destroyed. He did provide a copy of the invoice from

the creators of the arrangement, which describes the work that party performed as “Repair arrangement and refurbish arrangement”.

17. While I accept that the applicant had work done to the arrangement as described in the invoice, I do not find that the evidence before me establishes the state of the arrangement before or after the move, or the extent of the damage (if any) that resulted from the respondent’s handling of it. As such, I find that the applicant has not proven his claim.

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. As the applicant was not successful, I dismiss his claim for tribunal fees and dispute-related expenses.

ORDER

19. I dismiss the applicant’s claims and this dispute.

Lynn Scrivener, Tribunal Member