



Civil Resolution Tribunal

Date Issued: March 19, 2019

File: SC-2018-003398

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fukusaka v. Archibald*, 2019 BCCRT 336

B E T W E E N :

Barbara Fukusaka

APPLICANT

A N D :

Daryl Archibald

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about damaged furniture, specifically the base of a coffee table. The applicant, Barbara Fukusaka, says that while moving all her household goods on November 15, 2017 the respondent, Daryl Archibald, damaged the coffee table's

base. She says the respondent authorized her to buy a replacement but then refused to reimburse her. The applicant claims \$885.

2. In his Dispute Response filed at the outset of this proceeding, the respondent denied he damaged the furniture item, and says it was not damaged but rather the finish was peeling. However, as discussed below, the respondent chose not provide any evidence or submissions for this decision.
3. The parties are each self-represented. For the reasons that follow, I allow the applicant's claim for the replacement table base.

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 (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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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.

ISSUE

8. The issue in this dispute is whether the respondent damaged the applicant's coffee table and agreed to pay for its replacement, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. As noted above, the respondent moved the applicant's household belongings on November 15, 2017.
11. As noted above, in his Dispute Response the respondent said the applicant's table was not damaged, and that instead the finish was peeling. As discussed below, I reject this submission. I also note that for this decision the respondent asked to rely on discussions during the facilitation stage of this proceeding, to which the applicant consented. However, the respondent then chose to provide no evidence and no submissions, and so provided no evidence of discussions during the facilitation stage.
12. On November 30, 2017, the applicant texted the respondent that she had contacted the store EQ3 and ordered a replacement table base. She wrote that she was waiting to hear the final cost and shipping. The respondent replied, "OK thanks". I find the tenor of this exchange makes it clear the applicant told the respondent

about the damaged table very soon after the move. I find the table's finish was not peeling, as suggested by the respondent in his Dispute Response.

13. A few hours later on November 30, the respondent texted to ask if the applicant knew approximately how much the table was and what the delivery charge would be. The applicant responded the cost was \$790.80 before taxes and that she did not yet know the shipping costs. The respondent replied "Just let me know what the shipping cost is I may be able to pick it up and deliver it for you". The respondent expressed no concern that the original table had not been damaged. However, the respondent added that his insurance company "may want a picture" or may want to come out and have a look, which I find refers to the original damaged table base. The respondent wrote that he would let the applicant know if the insurance company needed anything from her.
14. I find this November 30 exchange indicates the applicant should have preserved the damaged table at that point, even though the respondent did not expressly request it. However, that obligation reasonably ended, as discussed below.
15. After the table had arrived at EQ3's Vancouver store, the applicant texted the respondent on January 25, 2018, and said "who do I send the bill to" for the coffee table. The applicant submits delivery of the replacement table based was included in the price so she did not need the respondent to help with delivery. In response to the applicant's text, the respondent provided an email and mailing address. The address differed from the respondent's invoice address slightly and so the applicant assumed the respondent made a typo and mailed the invoice to the respondent's invoice address. In this text, the respondent did not ask the applicant to preserve the original coffee table base and there was no mention of the potential insurance claim.
16. On February 5, 2018, the new table base was delivered and those third party movers removed the damaged table. In all of the circumstances, including the fact that the respondent chose not to provide evidence or submissions to rebut the applicant's position, I find the applicant reasonably believed it was okay to dispose

of the original table at this point. The fact that the respondent just gave a replacement address on January 25, 2018, without concern for preservation for the original table, supports this conclusion.

17. On February 21, 2018, the applicant asked about payment and the respondent said he was waiting on her invoice and that he was not using the insurance company. Again, there was no suggestion in the respondent's text about preserving the original/damaged coffee table base. The applicant re-sent the invoice the further address provided by the respondent. Again, this exchange supports the conclusion that preservation of the original table made no difference and was no longer important to the respondent.
18. On March 9, 2018, the applicant followed up again about the payment, and the respondent texted back that "Monday it will be sent out". The respondent further wrote "I will need to make a date to pick up the damaged table also", which I find is the first time the respondent specifically made a request to preserve the damaged table.
19. As referenced above, the respondent had told the applicant on November 30, 2017 that the insurer may want to have "a look" at the original table but that he would let the applicant know, and the applicant had the original damaged table removed on February 5, 2018. Again, bearing in mind the respondent chose to provide no evidence or submissions for this decision, I find the applicant waited a reasonable amount of time in this respect, noting the respondent had not specifically asked her to preserve the table and had subsequent communications that indicated payment with no reference to the insurer wanting to look at the table. In any event, on February 21 the respondent said he was not pursuing an insurance claim and given his lack of evidence or submissions I find the applicant's disposal of the original table on February 5 made no difference.
20. In summary, I find the respondent damaged the applicant's table and also agreed to reimburse her for its replacement table base. The applicant provided a November 30, 2017 invoice for \$885.70 from EQ3, showing what she paid for replacement

coffee table based, referred to as “legs” on the invoice. I note the invoice indicates the applicant replaced only the table base, not the entire table. I find this also supports the applicant’s position that the table was damaged. I find the applicant is entitled to reimbursement of the slightly lower amount of \$885, which is all that the applicant claimed in this dispute.

21. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$885, from November 30, 2017 to the date of this decision. This equals \$15.97.
22. As the applicant was successful, in accordance with the Act and the tribunal’s rules I find she is entitled to reimbursement of the \$125 she paid for tribunal fees. The applicant also claims \$30 in dispute-related expenses, but provided no receipts and no explanation of what the \$30 was for. I dismiss the \$30 claim.

ORDERS

23. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,025.97, broken down as follows:
 - a. \$885 in damages,
 - b. \$15.97 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees.
24. The applicant is entitled to post-judgment interest, as applicable. The applicant’s remaining claim is dismissed.
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.

Shelley Lopez, Vice Chair