



Civil Resolution Tribunal

Date Issued: March 27, 2019

File: SC-2018-005705

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Duncan v. Pritchett*, 2019 BCCRT 378

BETWEEN:

James Duncan

APPLICANT

AND:

Colleen Pritchett

RESPONDENT

AND:

James Duncan

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about moving expenses.
2. The applicant James Duncan, principal of DJ's Moving and Logistics (DJ), says he provided moving services for the respondent Colleen Pritchett, but she failed to pay. DJ claims \$1,313.25, which is the amount of his unpaid invoice.
3. In her counterclaim, Ms. Pritchett says DJ was supposed to move her in a day but turned the job into a "three-part ordeal", after which her move was still incomplete. Ms. Pritchett claims a total of \$5,000, broken down as,
 - a. \$1,313.25 for her moving expenses with DJ,
 - b. \$1,200 in additional costs to complete her move,
 - c. \$2,486.75 for an insurance adjuster to examine her belongings, determine the cost of her damages and have DJs pay for them.
4. The parties are each self-represented.

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. In some respects, this dispute amounts to a "she said, he said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in

a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
8. 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.
9. 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

10. The issues in this dispute are:
 - a. whether DJ provided moving services in a satisfactory manner, such that Ms. Pritchett must pay the \$1,313.25 invoice or
 - b. whether Ms. Pritchett is entitled to reimbursement of her moving expenses, due to deficiencies in the moving services provided by DJ.

EVIDENCE AND ANALYSIS

11. This is a civil claim in which the applicant, DJ, bears the burden of proof on a balance of probabilities. Ms. Pritchett bears the burden in her counterclaim. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
12. Ms. Pritchett says she hired DJ to move her belongings from Port Edward to Kitimat, BC. It is uncontested, and I find, that the move was to be completed at an hourly rate of \$125. Ms. Pritchett estimated her belongings would fill a 5 tonne truck plus “a bit extra”. However, the move was to be completed at an hourly rate, not by volume or weight of belongings. I find there was no agreement about a price ceiling for the move.
13. The question of the accuracy of the estimate of the volume of Ms. Pritchett’s belongings is important to the dispute. I find that, since she later had to pay someone to make six round trips to complete her move, Ms. Pritchett underestimated the volume of her belongings when she hired DJ.
14. Ms. Pritchett says the contract was for DJ to provide two men, but that at the time of the move 3 additional men showed up. She says she never agreed to pay for these extra people.
15. DJ says the additional people were needed to try to speed things up when the move fell behind. I find that the move fell behind for three reasons:
 - a. Ms. Pritchett did not have someone at her destination to provide access to the residence one of the mornings of the move;
 - b. the items were packed inefficiently by inexperienced staff that DJ had hired;
 - c. DJ had booked his moving staff for a 19 hour straight run, meaning they were tired and slower than expected when working on Ms. Pritchett’s move.

16. I turn to the relevant chronology. On July 26, 2018, DJ provided moving services to Ms. Pritchett. The invoice for services at that point was for 19 hours of time, at \$125 per hour, for a total of \$2,446.25.
17. That day Ms. Pritchett provided a VISA card number, by text, to pay an invoice of \$2,446.25 to DJs. This invoice was paid in full.
18. DJs delivered a second load of items on July 30, 2018 and unloaded these items on July 31, 2018.
19. DJs issued another invoice to Ms. Pritchett for the rest of the move. This invoice was for over \$2,000 of service, but DJs discounted it due to the delay in the move, by over \$800 dollars. The invoice reflects a discounted rate of \$100/hour that DJ provided to account for Ms. Pritchett's dissatisfaction with the move, and that she agreed, by text, to this rate. The invoice amount was \$1,313.25.
20. On July 31, 2018, there was another invoice produced by DJ for \$1,120.13. I find this was an earlier invoice before the unpacking charges were added. I find that nothing turns on this invoice because the subsequent invoice, including the total remaining charges, is the one in issue. That is, I do not find there was double billing to Ms. Pritchett of these charges.
21. That afternoon, Ms. Pritchett was to pay \$1,313.25. However, she was dissatisfied with the moving services and refused to pay the invoice.
22. In the counterclaim, Ms. Pritchett submitted a statement from a friend, SE, who observed the move on August 1, 2018 in the evening. Although there appears to be some confusion about whether these observations were made on July 31 or August 1, I accept that the observations were made of the move being conducted by DJ. SE says the movers were taking long breaks, moving a box at a time, treating the boxes roughly, and were generally disorganized. She also gave evidence that the movers were inexperienced. I accept this evidence, as it is consistent with the statement of BW, another friend of Ms. Pritchett, who also observed how the move was proceeding at the time.

23. The applicant filed a statement from DM. DM says he was hired by Ms. Pritchett to complete the move of her belongings. He made six trips between the two residences with his long box pick up. He charged Ms. Pritchett \$1,200 for his work and fuel.
24. However, I also find that DJ completed the move inefficiently, with inexperienced workers. DJ's text messages accept that the staff were overworked and that the move was being squeezed in among other bookings.
25. As well, I accept that many of Ms. Pritchett's belongings were damaged in the move. I accept the photographic evidence of a damaged crystal glass, scratches to her side tables and hutch, damage to two chair legs, and a few other furniture scratches. The damage was not disputed by DJ.
26. However, Ms. Pritchett did not prove the value of these damaged items. Because she benefitted from the moving services provided by DJ, and because I do not accept that DJ should have moved all of her belongings for the price she paid, I do not order a full refund of their invoice.
27. On a judgment basis I am prepared to make an award of \$300 for the damage done to Ms. Pritchett's belongings, based on the photographic evidence, together with the unsatisfactory timing of the move. I set this figure considering that DJ already provided a significant discount when Ms. Pritchett raised concerns about the delays and other quality issues regarding the moving service.
28. I find that Ms. Pritchett owes DJ \$1,013.25, which is the \$1,313.25 charged, less the counterclaim award of \$300. I make this finding because the invoice was already significantly discounted to compensate for the inefficiency of the move.
29. 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 find DJ, who was partly successful, is entitled to reimbursement of \$75, which is 50% of its tribunal fees. Because Ms. Pritchett

succeeded on the counterclaim only in small part, I do not award her any portion of her tribunal fees.

ORDERS

30. Within 30 days of the date of this order, I order Ms. Pritchett to pay DJ a total of \$1,099.01, broken down as follows:

- a. \$1,013.25 in payment for moving services provided,
- b. \$10.76 in pre-judgment interest under the *Court Order Interest Act*, calculated from July 31, 2018 to the date of this decision, and
- c. \$75.00 for tribunal fees.

31. DJ is entitled to post-judgment interest.

32. The parties' respective claims are otherwise dismissed.

33. 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.

34. 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