



Civil Resolution Tribunal

Date Issued: March 28, 2019

File: SC-2018-002421

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cehak v. Yelland et al*, 2019 BCCRT 391

B E T W E E N :

Ilse Cehak

APPLICANT

A N D :

Tanner Yelland, Tanner Yelland (Doing Business As Tanner's Turf),
Winston Hallier, and Winston Hallier (Doing Business As Dorset
Landscaping)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about damage done during landscaping work. The applicant, Ilse Cehak, says the respondents damaged her back yard while doing work for her neighbor, Blayne Le Cerf. Ms. Cehak originally named Mr. Le Cerf but withdrew her claims against him, and so I have amended the style of cause above accordingly.
2. Ms. Cehak says the respondents Tanner Yelland and Winston Hallier did the work in Mr. Le Cerf's backyard. As noted above, she named Mr. Yelland and Mr. Hallier personally as well as through their business names, Tanner Yelland (Doing Business As Tanner's Turf) and Winston Hallier (Doing Business As Dorset Landscaping). For ease of reference, I will simply refer to the respondents as Yelland and Hallier, noting at all material terms they were acting personally through their unincorporated businesses.
3. Ms. Cehak claims \$4,999 in damages related to repair and restoration of her back yard. Despite properly serving Yelland and Hallier, none of the respondents filed a Dispute Response as required. Therefore, the respondents are in default, as discussed further below. Ms. Cehak is self-represented.

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 respondents are liable for the applicant's back yard damage, and if so, how much should they pay.

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, in May 2017 the applicant's neighbor Mr. Le Cerf contracted with Yelland or his business to do landscaping work in Mr. Le Cerf's backyard. The applicant says Mr. Le Cerf asked her if they could use her yard to move an excavator in and out as his yard had no access. The applicant says Mr. Le Cerf promised that any damage to her property would be repaired.

11. The applicant says Yelland used Hallier to provide the machines to move materials between the front street and the applicant's back yard. The applicant also says soil, rocks, and other unwanted material removed from Mr. Le Cerf's backyard were left in her yard. She says the damage was not repaired when Mr. Le Cerf's project was finished.
12. The applicant says that at various times during the 3-week project, both Yelland and Hallier promised that proper restoration of the damaged part of her yard would be done. She says that she continued to raise the need for repairs with Yelland and Hallier between June and December 2017, during which promises were made and not fulfilled. Ultimately, she says Hallier stopped communicating with her and later Yelland refused to do the repairs saying he was not responsible for them.
13. I note the applicant made these assertions about her discussions with Yelland and Hallier in the Dispute Notice that started this proceeding, and not just in her arguments after she withdrew against Mr. Le Cerf.
14. As noted above, Yelland and Hallier are in default. Hallier was served by personal service on July 28, 2018X, and Yelland was served by registered mail on May 24, 2018. Both failed to provide a Dispute Response as required. When a party is in default, liability is assumed. Generally, this means the applicant's position is assumed to be correct on the issue. I also note Mr. Le Cerf stated in his Dispute Response, filed before the applicant's claims against him were withdrawn, that Hallier told him that he had obtained Ms. Cehak's permission to use her yard for access.
15. The applicant says that in exchange for her granting Yelland and Hallier use of her yard, they agreed to leave good top soil on her property, to cover stumps. Instead, they left excavated material that caused weeds to grow.
16. Bearing in mind they are in default, I find Yelland and Hallier damaged the applicant's backyard as alleged. The question then is whether the applicant has proven the value of the \$4,999 claimed. She has not yet had the repairs done.

17. In his Dispute Response, Mr. Le Cerf stated that after the project was done, he inspected the property and saw no damage. However, he also stated that Yelland had one his employees inspect and repair a small piece of lawn that had some machine treads. However, the evidence shows also that Mr. Le Cerf was not always at home and may have been unaware of the extent of Yelland's and Hallier's use of the applicant's property.
18. The applicant provided photos from October 16, 2017, which she says were taken after the respondents' efforts to correct the problems failed. She says they show dumped soil, damaged grass, weed growth, and blackberry cane. She provided later photos taken on January 9, 2019, showing how the damage has progressed. I note a November 8, 2017 email from Yelland in which he told the applicant that he would have a crew "swing by next week to evaluate and come up with a solution".
19. I infer the weeds and blackberry growth arises from the dumping of soil that might have contained such material, rather than the machine's movement across her lawn. I agree the photos show an area of the applicant's back yard that has weeds and track marks on it.
20. The applicant is elderly and I find it was reasonable for her to continue her discussions with the respondents, given my conclusion at least Yelland promised to resolve the problem. Again, given the respondents are in default, I find they failed to do so. The applicant started this tribunal proceeding on April 5, 2018, and at that point asked the respondents to carry out the full restoration of her backyard. After this dispute went through the tribunal's facilitation process and her claims against Mr. Le Cerf withdrawn, the applicant advised she wanted compensation for the repair rather than having the respondents do the work. I agree this is reasonable, in the circumstances.
21. The applicant provided 2 estimates. The first dated March 21, 2018 for \$5,000 plus GST, for removing "bramble, debris, newly growing plants from that sloped area", which was noted to be terribly invasive bramble, plus putting down fresh top soil. The second was in 2 parts, dated November 20 and 22, 2018, for a total of

\$4,111.80. This estimate was for removal of unwanted grass and weeds, bin rental and disposal, and 10 years of topsoil delivered and installed.

22. I find the applicant is entitled to an order for \$4,111.80. I do not award pre-judgment interest as the evidence is that she has not yet incurred any expense related to this award.
23. The applicant claims \$175 in tribunal fees and \$144.03 in dispute-related expenses related to personal service on the respondents. As she was successful, I find she is entitled to reimbursement of these amounts, under the Act and the tribunal's rules.

ORDERS

24. Within 14 days of this decision, I order Yelland and Hallier to pay the applicant a total of \$4,430.83, broken down as follows:
 - a. \$4,111.80 in damages, and
 - b. \$319.03, for \$175 in tribunal fees and \$144.03 in dispute-related expenses.
25. The applicant is entitled to post-judgment interest, as applicable.
26. 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.

27. 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