



Civil Resolution Tribunal

Date Issued: April 1, 2019

File: SC-2018-001891

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Westcoast Plastic Recycling v. Crown Building Supplies Ltd.*,
2019 BCCRT 402

B E T W E E N :

Westcoast Plastic Recycling

APPLICANT

A N D :

Crown Building Supplies Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for cancellation fees under a plastic recycling contract. The applicant, Westcoast Plastic Recycling, says the respondent, Crown Building Supplies Ltd., owes \$995.55 for early cancellation fees.
2. The respondent denies liability and says the recycling services provided were inadequate and that they were improperly charged.
3. The parties are each represented by an employee. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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.
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 owes the applicant \$995.55 as an early cancellation fee under the parties' contract.

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. In this dispute, the applicant claims \$995.55, as set out in its August 23, 2017 invoice claiming 21 months of recycling terms to a "contract end date" of May 2019. This is based on a \$19.95 monthly charge.
11. On May 11, 2015, the respondent signed a 2-year plastic waste collection contract with the applicant. The 2-page contract was for once monthly pick-up of "Clear Film/Poly/Thin PE Foam", for \$14.95 per pick-up. The contract provided, among other things, that the applicant reserved the right to change the day of pick-up, if needed. There is handwritten notation at the bottom of the 1st page, "bags delivered", which I infer refers to the plastic recycling bags that the respondent was to use to set out its recycling.
12. The contract also provides the applicant reserves the right to increase its charges during the term, for various specified reasons. Given my conclusion below, nothing in this dispute turns on the reasons for the applicant's price increases before the respondent cancelled the agreement. While the respondent questions past billings for services provided (or not provided, as the respondent alleges), the respondent did not file a counterclaim and so I do not need to address those issues. As noted

above, this dispute is only about the applicant's entitlement to a cancellation fee under the contract.

13. The contract automatically renewed for additional 2-year terms, unless either party gave at least 90 days "written notice" of cancellation. Contrary to the applicant's submission, there is nothing in the contract that required notice by mail, just that it was in writing. Significantly, the contract also does not include any liquidated damages clause if the contract is not cancelled as set out in the agreement. Instead, the contract states that if either party gives the other written notice, then both parties agree to immediately undertake good faith negotiations to settle upon mutually agreeable terms, on or before the term's expiry. I infer this is what the applicant refers to as the right of first refusal clause. The contract at the end of its 2nd page states it is the entire agreement between the parties.
14. It is undisputed that on July 7, 2017, the respondent sent an email that it no longer required the applicant's services, which the respondent reiterated in another August 3, 2017 email. Contrary to the applicant's submission, the contract in evidence before me does not require notice by mail. I find notice by email satisfied the respondent's obligation to give "written notice".
15. The contract required only "at least" 90 days written notice before the end of the term. The respondent did that on July 7, 2017, but at that point the end of term was May 2019. So, the question is then what are the respondent's obligations for having cancelled? As noted, the contract does not provide for liquidated damages. Instead, it only requires the parties to work in good faith to come to mutually agreeable terms. I find the applicant has not proven the respondent failed to do so, or that it is entitled to any payment as an "early cancellation" fee.
16. In particular, the respondent says the type of recycling bag the applicant used was inadequate and that it tried to arrange something different, but the applicant refused. The respondent says it made calls to the applicant, but they were not returned. The applicant denies any phone calls. The respondent's July 2017 email said it would pay for the July invoice, but their plastic was not picked up and the

applicant did not respond. As noted above, the applicant bears the burden of proof. I find the applicant has not proved the respondent failed to negotiate in good faith. There is no basis to conclude the respondent breached the parties' contract such that the respondent owes the applicant any compensation. As noted, there is no liquidated damages clause in the contract.

17. Given my conclusions above, I dismiss the applicant's claims. Under the Act and tribunal rules, as the applicant was unsuccessful, I find it is not entitled to reimbursement of tribunal fees.

ORDER

18. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair