



Civil Resolution Tribunal

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File: SC-2018-006615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sumas Environmental Services Inc. v. Harvard Industries Ltd. and Laurie Kirlik*, 2019 BCCRT 410

B E T W E E N :

Sumas Environmental Services Inc.

APPLICANT

A N D :

Harvard Industries Ltd. and Laurie Kirlik

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Sumas Environmental Services Ltd. (Sumas) says it provided hazardous waste disposal services to the respondents Harvard Industries Ltd. (Harvard) and Laurie Kirlik. Sumas says it charged a total of \$4,459.88 for removal

of waste. Harvard paid \$2,229.94, but then failed to pay the \$2,231.31 that remains owing.

2. Harvard says the applicant only removed half as much waste as it charged for. As a result, Harvard says it does not owe the \$2,231.31 claimed, and asks that the dispute be dismissed.
3. Sumas is represented by principal or employee Setareh Javadi. Harvard is represented by its president and director Laurie Kirlik, who also represents herself personally.

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*. 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 some respects, this dispute amounts to a "he said, she 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.
6. 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.

7. 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.
8. 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

9. The issue in this dispute is whether either Harvard or Ms. Kirlik owe Sumas \$2,231.31 for waste removal services provided.

EVIDENCE AND ANALYSIS

10. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. The parties agree that Sumas provided waste pick up and disposal services to Harvard.
12. This dispute is about how much waste was picked up.

13. Sumas says that on June 19, 2018, it picked up the following hazardous waste from Harvard, totaling 169 units:
 - a. Adhesives (20L) 76 Pails
 - b. Adhesives (10L) 19 Pails
 - c. Adhesives (4L) 49 Cans
 - d. Adhesives (1L) 16 Cans
 - e. Adhesives 1 Drum
 - f. Waste Oil (5 L) 7 Pails
 - g. Aerosol 1 Pail
14. On June 29, 2018, Sumas issued an invoice to Harvard for \$4,459.88 for the 169 units.
15. Harvard says that Sumas' representative Colin Laba confirmed that only 82 units were picked up, even though Sumas' driver claimed to have picked up 7 pallets, or 169 units, of waste.
16. Based on the evidence, I find that Mr. Laba did a pre-pick up estimate, on May 28, 2018, in which he counted 82 units for pick up. There is no evidence of Mr. Laba providing a count at the time of or after pick up.
17. A Service Request document dated June 6, 2018 shows that Sumas expected to pick up 7 pallets, but someone used handwriting to change this to 5 pallets. This document does not clearly show the number of units of waste picked up though it appears to tally over 160 units. The document is signed by Jason Apps, an employee of Harvard.
18. The June 29, 2018 manifest for the pick-up, I find to be unclear as to what quantity of waste was picked up.

19. Harvard provided a statement from Jason Apps in which he describes there being three pallets and one drum for pick up. This evidence is corroborated by Dan Genereux, Harvard superintendent, who was present when the waste was being organized for removal. He confirms that there were three pallets and one drum.
20. Ms. Kirlik gave evidence that the physical location where the pallets were placed would not hold 7 pallets, meaning Sumas could not have picked up 7 pallets from that space.
21. Given this evidence, I find that Sumas did not pick up the amount of waste it charged for. I am satisfied that the waste picked up was about one half of the amount recorded on its invoice. In the circumstances, I dismiss Sumas' claims.
22. Regardless of my conclusion above, I find that Ms. Kirlik was acting in her capacity as president and director of Harvard at all material times in dealings with Sumas giving rise to this dispute. I dismiss the claim against Ms. Kirlik personally, as there was no allegation nor proof of any liability on her part.
23. 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 see no reason in this case not to follow that general rule. Since the respondent was successful, but paid no tribunal fees, I make no order in this regard. I dismiss the applicant's claims for tribunal fees.

ORDER

24. I dismiss Sumas' claims and this dispute.

Julie K. Gibson, Tribunal Member