



# Civil Resolution Tribunal

Date Issued: April 11, 2019

File: SC-2018-007006

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *O'Reilly v. Waste Connections of Canada Inc.*, 2019 BCCRT 446

**B E T W E E N :**

Ruth O'Reilly

**APPLICANT**

**A N D :**

Waste Connections of Canada Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. This dispute is about who is responsible for damage to a garden bed and rockery.
2. The applicant Ruth O'Reilly says a truck belonging to the respondent, Waste Connections of Canada Inc., drove into her rock garden causing displacement of large boulders, and uprooting plants.

3. The applicant says the respondent agreed to repair the damage within a few weeks of the incident, but the work it did was incomplete and unsatisfactory. The applicant asks for \$1,456.21, which she says is the amount of money it will cost to put the displaced boulders back, repair boulder damage, and replace the soil and plants.
4. The respondent denies causing the damage claimed by the applicant. It says it was “unable to find any related damage” to its vehicle. The respondent asks that the dispute be dismissed.
5. The applicant is self-represented. The respondent is represented by ICBC representative Kim Laurie.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.
8. 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.

9. 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.
10. 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**

11. The issue in this dispute is whether the respondent must pay the \$1,456.21 claimed by the applicant for damage to her rock garden.

## **EVIDENCE AND ANALYSIS**

12. 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.
13. On April 16, 2018, the applicant arrived home to find that her rockery had been damaged. She describes boulders and top soil having been displaced, and multiple plants uprooted. The applicant cleared some debris from the roadway that evening.
14. Her son, SA, had been home that day, and said he saw a driver from the respondent company stop his truck and get out to look at the rockery, that morning.

15. That evening, the applicant approached the truck driver for the evening waste collection, HSD. She says he apologized and said he drove the truck that morning and had struck the rockery. He provided the applicant with a copy of his driver's license and his contact phone number.
16. At first, HSD said he would cover the damage personally. Later, he told the applicant the matter would go through the respondent.
17. The applicant says HSD's supervisor, Richard, attended at her property on May 18, 2018, to discuss the required repairs for the rockery.
18. The applicant says Richard said it would take a couple of weeks to get the work done.
19. On June 26, 2018, some repair work was completed by the respondent. The applicant says 2 small rocks, 4 plants and a small amount of topsoil had been placed on her rockery. She says it was unsatisfactory. I accept her uncontested evidence on this point.
20. While it is uncontested, and I find, that the rockery was damaged to the extent the applicant describes, the parties disagree about whether the respondent's truck caused the damage. To decide this issue, I must consider the communications between the parties in more detail.
21. The applicant filed text messages dated April 17, 2018, between her and HSD. In them, HSD says "I told my company" and provides his supervisor's contact details, in response to the applicant's text about her landscaper providing an estimate for the repairs.
22. The applicant also filed two voice mail messages left for her by Richard on April 24, 2018 and June 25, 2018. In them, Richard asks for more information, including an understanding of what the rockery looked like and where the driver had driven. In the June message he says the rockery repairs will be done "hopefully at some point tomorrow."

23. On August 21, 2018, the applicant obtained a quote of \$1,456.21 from the Grounds Guys, to rebuild the bed and replace and repair the rockery.
24. On February 10, 2019, the applicant's son, SA, wrote a statement saying that on April 16, 2018 he saw the respondent's truck driver park his truck alongside the applicant's house, dismount and walk up the lane to the rockery, look down at it and then return to his truck and drive away.
25. The respondent filed an undated statement from HSD saying he did not damage "anyone's property" and that he gave his licence to the applicant only because she claimed there was damage caused by him. I pause to note that HSD implies he met the applicant near her home that day, as she describes. This is consistent with the applicant's version of events. The statement from HSD was the only piece of evidence filed by the respondent.
26. The respondent says that it is not liable for the damage to the rockery because,
  - a. there is no witness to the incident,
  - b. its truck's tire tracks do not match those at the site,
  - c. the rocks moved were so large that there would have been signs of impact on the truck, which they say do not appear on their truck,
  - d. HSD denies driving on the property or getting out of the truck to address anything, and
  - e. HSD provided his driver's license and phone number to the applicant as a courtesy, not because he admitted causing the damage.
27. While I agree that no witness saw the respondent's truck strike the rockery, I accept the evidence of SA that he observed the respondent's truck park, the driver dismount and examine the rockery, and then drive away, on the same day that the applicant arrived home to find the rockery damaged.

28. Given the phone messages from Richard and the text messages from HSD, along with SA's evidence, I find the preponderance of the evidence supports the conclusion that the respondent's truck did strike the rockery, causing the damage.
29. I place no weight on the assertion that the respondent's truck tire tracks did not match those at the site, since there was no evidence filed to prove it. As well, the photographic evidence of the rockery damage shows it was such that it may not have caused significant damage to the truck. The respondent did not provide photographs of the truck or other evidence proving that it was not damaged.
30. While I understand that HSD denies being responsible for the damage, this evidence is inconsistent with the observation of SA, if HSD was driving the respondent's truck that morning. The respondent did not file a schedule showing that HSD was elsewhere, or that its trucks were not servicing the route outside the applicant's home, on April 16, 2018.
31. For the purposes of this dispute, it is only necessary for me to find that the respondent's truck struck the applicant's rockery and caused damage. I need not make a specific finding as to the identity of the driver that morning.
32. Because the applicant filed the only evidence of the damage, which is clear in the photographs, and the only estimate for landscaping repair, I accept the estimate and find that the respondent owes the applicant \$1,456.21.
33. I will calculate prejudgment interest under the *Court Order Interest Act* from May 16, 2018, 30 days after the rockery was damaged, which I find reasonable.
34. 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. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.

## ORDERS

35. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,597.91, broken down as follows:
- a. \$1,456.21 for repair to the rockery and garden bed,
  - b. \$16.70 in pre-judgment interest under the *Court Order Interest Act*, calculated from May 16, 2018 to the date of this decision, and
  - c. \$125 for tribunal fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. 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.
38. 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.

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Julie K. Gibson, Tribunal Member