



# Civil Resolution Tribunal

Date Issued: April 26, 2019

File: SC-2018-006257

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. 580623 B.C. Ltd.*, 2019 BCCRT 502

B E T W E E N :

Super Save Disposal Inc.

**APPLICANT**

A N D :

580623 B.C. Ltd.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc., says the respondent, 580623 B.C. Ltd., breached the parties' contract by attempting to cancel the parties' contract before the agreed term ended, and in

particular outside the stipulated “cancellation window”. The applicant claims \$599.72 in debt and \$2,720.34 in liquidated damages, for a total of \$3,320.06.

2. The respondent denies liability and says it tried to cancel the contract and the applicant’s contractual terms are unconscionable.
3. The applicant is represented by an employee, Marli Griesel. The respondent is represented by Roy Tan, who I infer is a principal or employee.

## **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 is to what extent, if any, the respondent owes the applicant \$3,320.06 for waste disposal services and liquidated damages.

## **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. The applicant initially only provided an excerpt from the parties' July 31, 2012 contract, but I note the respondent does not deny he signed it. The excerpt was in part illegible and so I asked the tribunal administrator to obtain a complete clear copy from the applicant and by providing copies of the same contract the respondent confirmed that is the contract he also had.
11. I turn then to the contract's relevant terms (my bold emphasis added):
  - a. The applicant has the exclusive right to provide all non-hazardous solid waste disposal, organics, and recyclable collection services (Clause 1).
  - b. The "monthly charge" is for a weekly service of a 2-yard bin for \$38, and extra lifts are \$35.
  - c. The effective date of the contract is July 31, 2012. The agreement starts on the effective date for a 5-year term, which is automatically renewed unless cancelled according to the agreement. This means the first term ended July 31, 2017. The current term ends July 31, 2022.

- d. The respondent can terminate the contract by providing not more than 120 days and not less than 90 days written notice, by registered mail, before the end of the term or any renewal term. I refer to this as the 'cancellation window'. (Clause 2). **The cancellation window was between April 2 and May 2, 2017.**
  - e. Clause 11 provides that if the customer tries to terminate the Agreement before the end of the term, the customer agrees to pay a sum equal to any amounts owing for services and equipment rendered up to the repudiation date, plus an amount equal to monthly charges that would become due for the balance of the term calculated from the repudiation date.
12. There is no dispute the applicant delivered bins and provided waste disposal services after 2012. The issue in this dispute turns on the respondent's attempted cancellation in both July 2015 and on June 5, 2017.
13. On June 20, 2017, the respondent insisted it was refusing service, after the applicant informed it of the liquidated damages claim. The applicant reiterated its liquidated damages claim in a July 12, 2017 letter, but for reasons unknown to me did not send the respondent an invoice for that claim until October 24, 2017. On September 28, 2017, the applicant removed their bins. There is no explanation before me as to why the applicant delayed in removing their bins, given the respondent's clear refusal in June 2017.
14. I turn then to the \$599.72 debt claim. I note the applicant did not provide a breakdown in its argument as to how it arrived at this figure. Instead, it simply filed a number of invoices and credit notes, and a payment statement. This is not particularly helpful. Bearing in mind the applicant is a sophisticated litigant, the applicant should have provided a breakdown in its argument.
15. By my calculation, I find the applicant's invoices and credit notes in evidence net a total of \$637.42. There is no explanation before me as to the difference between that sum and \$599.72. In any event, a number of the charges are for an

“administration fee”, which I find is not permitted under the parties’ contract. Further, a number of the invoices are for “service” provided after the respondent clearly stated it no longer wanted service and wanted the bins removed. I find there is therefore no basis for service charges after June 20, 2017.

16. The applicant’s “A/R Customer Inquiry” shows the respondent made monthly payments of around \$66 to \$72 from February 11, 2016 to April 2017, with the exception that a January 2017 payment was not made.

17. I therefore find the respondent owes \$117.41 in debt, for the following:

- a. \$68.07 for the December 31, 2016 invoice #1846042, for January 1 to 31, 2017 service. I do not allow the separate \$8.24 ‘administration fee’ invoice.
- b. \$58.25 for the April 30, 2017 invoice #1882686, for May 1 to 31, 2017 service. I do not allow the separate \$8.24 ‘administration fee’ invoice.
- c. \$58.25 for the May 31, 2017 invoice #1892071, for June 1 to June 30, 2017 service. I do not allow the separate \$8.24 ‘administration fee’ invoice.
- d. \$61.42 credit, based on the applicant’s filed credit note dated July 22, 2015.
- e. \$5.74 credit, based on the applicant’s filed May 31, 2017 credit note for an ‘over weight’ charge.

18. I turn next to the \$2,720.34 liquidated damages claim.

19. On July 27, 2015, the respondent emailed the applicant about whether it “could get out of the contract early”. This was not a sufficient cancellation under the contract, as it was not sent in writing by registered mail, and also was not clearly a cancellation.

20. On June 6, 2017, the applicant emailed again asking to terminate the agreement. Contrary to the respondent’s assertion, this email did not comply with the contract’s requirement that cancellation be in writing by registered mail and be within the cancellation window that fell between April and May 2017, as noted above.

21. Also, the contract does not require contact before auto-renewal, contrary to the respondent's suggestion otherwise. The contract on its face indicates that it will automatically renew.
22. In July 2017, after accepting the respondent's repudiation of the contract the applicant advised the respondent of its liquidated damages claim. As this was at the beginning of the new 5-year term, the claim is based on 60 months remaining until July 31, 2022, at \$43.18 per month plus tax. This equals \$2,720.34.
23. The respondent did not provide substantive submissions in this dispute and so I rely on the evidence it provided and its statements in the Dispute Response it filed at the outset of this proceeding. In its complaint to the Better Business Bureau, the respondent stated the applicant failed to highlight the cancellation window and the fact that the contract automatically renewed. The respondent however has not provided any evidence to support a conclusion that it could not have understood the contract at the time it signed it. The respondent's submission amounts to an argument that the applicant owed it a fiduciary obligation on an ongoing basis to ensure it understood all of the contract's terms. I find the evidence does not show this was required. In other words, I find the evidence is that the parties agreed to the contract's terms. The respondent over time may have lost track of the cancellation window's timing, which was compounded by the fact that its representative in the contract left their company. This however does not mean the contract was unfair.
24. I acknowledge prior decisions that found disposal service contracts are onerous. However, the court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered identical language involving the applicant and found the contract enforceable. While I am not bound by other tribunal decisions, the court's decision in *Tristar* is binding, as noted in several tribunal decisions and in the Provincial Court's decision in *Northwest Waste v. Andreas Restaurant Ltd.*, 2016 BCPC 395.
25. In short, while the contract's terms are onerous, they are enforceable. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the

event of a breach of contract. The parties' contract states that if the service agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages, in the amount of the remaining monthly payments owing under the agreement, plus taxes.

26. I find the applicant is entitled to its \$2,720.34 liquidated damages claim. It is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on this sum from October 24, 2017, which equals \$56.53. The applicant did not claim contractual interest in this dispute and so is also entitled to COIA interest on the \$117.41 debt award granted above, from June 30, 2017 a date I consider reasonable in the circumstances, which equals \$2.70. This combined interest equals \$59.23.
27. As the applicant was largely successful in this dispute, in accordance with the Act and the tribunal's rules I find it is entitled to reimbursement of \$175 in tribunal fees. The applicant claimed \$84 in dispute-related expenses for personal service of the Dispute Notice, which I find reasonable and is supported by an invoice.

## **ORDERS**

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$3,155.98, broken down as follows:
  - a. \$117.41 in debt,
  - b. \$2,720.34 in liquidated damages,
  - c. \$59.23 in pre-judgment interest under the COIA, and
  - d. \$259, for \$175 in reimbursement for tribunal fees and \$84 for dispute-related expenses.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

31. 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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Shelley Lopez, Vice Chair