



Civil Resolution Tribunal

Date Issued: May 6, 2019

File: SC-2018-007331

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Filippone et al v. Hugo's Moving Ltd*, 2019 BCCRT 536

B E T W E E N :

Anne Filippone and Robert Filippone

APPLICANTS

A N D :

Hugo's Moving Ltd

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about moving services. The applicants, Anne Filippone and Robert Filippone, say the respondent movers, Hugo's Moving Ltd, damaged some of their furniture during the contracted move, specifically their antique "master" dining room chair, a lamp, and broke glass in their "corner unit". The respondent was hired to

only load and unload the applicants' items in and out of a pod, and the applicants hired another company to transport the goods.

2. The applicants say the respondent attempted to repair the chair and lamp but has since failed to return them as promised and has refused to repair the corner unit glass.
3. The applicants want their furniture back, and value the chair at \$1,000 and the lamp at \$125, plus \$50 for the broken glass. The applicants say if the chair is returned unrepaired, they should receive \$240.80 for its re-upholstering. The applicants also claim \$200 for their time in making 2 unsuccessful trips to pick up their furniture from the respondent.
4. The applicants are represented by Anne Filippone. The respondent is represented by Kyle Delfing, an employee or principal.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario. Credibility of interested 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. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

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 9.3(2), 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.

ISSUES

9. The issues are whether the respondent is responsible for damage to the applicants' furniture, and if so, what is the appropriate remedy, bearing in mind the respondent has the applicants' damaged chair and lamp.

EVIDENCE AND ANALYSIS

10. 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.
11. This dispute primarily turns on 3 things: whether the applicants have proved the respondent damaged their goods, whether the parties' contract covers the amount of damages claimed, and to what extent the respondent is responsible because it took the applicants' lamp and chair to fix them.

12. The applicants hired the respondent to move their furniture into a portable pod in July 2017, when they sold their home. It is uncontested their goods were stored in the pod for a year, and loaded and unloaded twice by the respondent onto a transport truck by winching onto a tilt deck.
13. Around a year later on August 1, 2018, after another company delivered the pod to the applicants' new home, the respondent unloaded the furniture out of the pod and from the moving truck, into the new home.
14. The applicants submit the respondent damaged their dining room chair, lamp, and the corner cabinet ("china nook") glass. In addition, the applicants add new alleged damage to a hope chest, jewellery box, and living room table. There is no explanation before me as to why the additional furniture damage was not mentioned at the outset of this proceeding.
15. In their reply submission, the applicants say Mr. Filippone witnessed the mover put his knee into the corner unit glass, forcibly yank on the chair's arm rests and damaging the chair, and yank the lamp, breaking it. I place little weight on this evidence given it was raised in reply at first instance, without the respondent having the opportunity to address it. I do however acknowledge the applicants' initial allegation that the respondent's "crew" damaged their furniture, which the respondent disputes.
16. The respondent submits it does not cover goods damaged in transport by other carriers, which I find is consistent with the parties' contract. The respondent denies its crew damaged the furniture. The respondent says Mr. Delfing offered to try and fix the lamp and chair as a courtesy gesture, and was under no obligation to do so, and the applicants started this proceeding because they did not like his (changing) timeline to deal with the furniture.
17. The respondent says it is a professional mover and the applicants declined to rent moving blankets, due to their \$25 cost each. The respondent says this is the likely reason the goods were damaged in transport. The applicants deny this and say they

were not advised to “purchase their blankets”. The respondent says the applicants’ bed linens and towels were insufficient, and that the respondent had warned the applicants there would be issues. Again, the applicants deny this. However, in her September 7, 2018 email to the respondent, Ms. Filippone stated she did not rent the moving blankets because she had so many left over from their move. In context, I find this shows the respondent did recommend the applicants rent their professional moving blankets, and the applicants declined.

18. On balance, I find the applicants have not proved the respondent damaged their furniture, as opposed to it being damaged in transport. I say this due to the applicants’ refusal of the appropriate moving blankets and because I am unable to prefer Mr. Filippone’s witness account over the respondent’s contemporaneous assertion that the goods were damaged in transport. However, as discussed below, that is not the end of the matter.

Agreement to try and fix the lamp and chair

19. It is undisputed that Mr. Delfing took the chair and lamp away to try and repair it. The applicants say this was because he accepted responsibility for the damage. The respondent submits it was because Mr. Delfing was trying to be helpful and “nice”, and that there was no obligation to repair. I agree, because of my conclusion above and because the parties’ signed contract only allowed compensation of \$0.60 per pound for damaged items, which is nominal although I do not know the precise weight of the chair and lamp. The applicants gave no consideration to Mr. Delfing for the repair of the furniture that I have found was not damaged by the respondent. I find this means Mr. Delfing’s offer to try and fix the items is not an enforceable agreement.
20. Nonetheless, on the respondent’s behalf Mr. Delfing took the applicants’ lamp and chair. I find the applicants are entitled to their return. The evidence suggests they have not been repaired, apparently because Mr. Delfing did not have time to deal with it before the applicants demanded them back. In any event, given my conclusions above, I find the applicants are not entitled to compensation for

damage to the chair, lamp, and broken glass in the corner unit. I dismiss those claims.

Damages

21. I find the applicants are entitled to the return of the lamp and chair, though if they are not yet repaired the respondent has no obligation to complete the repair. I find this order is more appropriate than an order for compensation, since the applicants want their furniture back and the respondent has no use for it.
22. In all the circumstances, I find the respondent must deliver the lamp and chair to the applicants at their address used in this proceeding, at the respondent's expense. The respondent must email the applicants in advance of the date and approximate time of delivery. I have addressed the timing in my order below.
23. It is uncontested that the applicants inadvertently overpaid the respondent's moving invoice by \$27.08, a sum the applicants also claim in this dispute. While I find the overpayment was not the respondent's fault, I find the respondent must reimburse the applicants \$27.08. They are entitled to pre-judgment interest on the \$27.08 under the *Court Order Interest Act* (COIA) from August 1, 2018.
24. The applicants' remaining claim is for \$200, related to their 2 trips to try and pick up their furniture.
25. The applicants started this tribunal proceeding on October 9, 2018. Mr. Delfing emailed the applicants that they could pick up their furniture (chair and lamp) on October 18, 2018 at 1 p.m. When the applicants arrived, Mr. Delfing required them to sign a release or else he would not return the furniture. Given litigation had started, a release is not an unusual expectation as part of a settlement or resolution of the dispute. However, the parties' accounts differ as to who was belligerent or unreasonable during that meeting, and I find the applicants have not met the burden of proving their version is more likely. The material point is that in the end, the applicants left without their furniture, without signing the release.

26. The evidence shows the applicants attended the first time without an appointment. The second time was the October 18 visit above, where I have found the applicants have not proved the respondent acted unreasonably. Given these circumstances, and the fact that the tribunal generally does not compensate parties for their 'time spent' on a dispute, I dismiss the applicants' \$200 claim.
27. The applicants were partly successful in this dispute. In accordance with the Act and the tribunal's rules I find they are entitled to reimbursement of half their \$125 paid in tribunal fees, namely \$62.50. Similarly, they are entitled to reimbursement of half their \$89.25 dispute-related expense for serving the respondent, namely \$44.63.

ORDERS

28. Within 21 days of this decision, I order the respondent to pay the applicants a total of \$134.56, broken down as follows:
 - a. \$27.08 in debt,
 - b. \$0.35 in pre-judgment interest under the COIA, and
 - c. \$107.13, for \$62.50 in tribunal fees and \$44.63 in dispute-related expenses.
29. Within 21 days of this decision, I also order the respondent to deliver the applicants' lamp and chair to them in their current condition, at the respondent's expense. The respondent must email the applicants, at least 5 days before the date of delivery, to advise of the date and time for delivery.
30. The applicants' remaining claims are dismissed. The applicants are entitled to post-judgment interest on the monetary award above.
31. 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.

32. 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