



Civil Resolution Tribunal

Date Issued: May 8, 2019

File: SC-2018-008866

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Masters Building Services Ltd. v. The Owners, Strata Plan LMS 2481*, 2019
BCCRT 547

BETWEEN:

Masters Building Services Ltd.

APPLICANT

AND:

The Owners, Strata Plan LMS 2481

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about cleaning services. The applicant, Masters Building Services Ltd., says the respondent strata corporation, The Owners, Strata Plan LMS 2481,

owes it \$2,240.94 for cleaning supplies and services performed in May and June 2018, plus \$500 for time spent pursuing this dispute.

2. The respondent denies liability for the claim. It says it withheld payment because the cleaning was substandard, and it felt it was being overcharged for supplies.
3. The applicant is represented by its principal, Todd Mikl. The respondent is represented by a strata council member.

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. Some of the evidence in this dispute amounts to a “he said, he said” scenario. The 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. 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 British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an 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 9.3(2), 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.
8. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan Strata Corporation LMS 2481. Based on section 2 of the *Strata Property Act*, the correct legal name of the strata is The Owners, Strata Plan LMS 2481. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUE

9. The issue in this dispute is to what extent, if any, the respondent owes the applicant for outstanding invoices for cleaning services and supplies.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. Mr. Mikl says the applicant provided cleaning services for the respondent's building since September 2015. They did not have a written contract, but he advises the agreement was for janitorial services 3 days per week plus the cost of supplies. He advised the applicant would purchase the necessary supplies, and subsequently bill the respondent for its purchases. This is not disputed by the respondent.
12. In November 2017, the respondent was notified that the applicant was raising its prices effective July 1, 2018. The respondent subsequently cancelled its contract with the applicant, effective the end of June 2018.
13. The applicant submits it provided cleaning services to the respondent up until June 30, 2018 and provided the respondent with invoices for May and June 2018 for its services and supplies. The applicant submits that the supplies portion of the May 2018 invoice (\$406.35) and the entirety of the June 2018 invoice (\$1,834.59) remain outstanding.
14. The respondent argues that the cleaners were overcharging for cleaning supplies and had done a poor job cleaning the premises, specifically during June 2018, and therefore should not have to pay the invoices.
15. In support of its position that the cleaning services were subpar, several witness statements were provided by the respondent. I note that while some of the statements are undated, they were all written after the termination of the applicant's contract.
16. The applicant states that although it did field some complaints during its relationship with the respondent, no complaints were received about its services since March 2018. The applicant explained the March 2018 complaints related to a specific washroom that was not being cleaned because the applicant did not have a key to it, which it corrected once notified. The respondent submits that the charges for supplies were not itemized and were expensive, and that they were not receiving the services for which they were paying. The applicant says that no issues had ever been raised by the respondent about the cost of supplies until after termination of

the contract. Based on the evidence provided, I am satisfied that although the respondent may have had concerns about the quality of the applicant's work in the last months of the contract and the cost of supplies, it did not communicate its concerns until after the last services were provided. Therefore, I find the respondent's concerns were not that significant, or they would have been raised with the applicant earlier.

17. Further, the respondent has not provided any contemporaneous evidence to support its claim that the applicant did not perform its work or failed to provide supplies in May and June 2018, so I find the respondent must pay for the services and supplies it received.
18. The applicant provided time sheets for May and June 2018, which indicate the cleaners were on site for 14 out of 31 days, for a total of 29 hours in May, and 13 out of 30 days, for a total of 25.5 hours in June. The applicant also provided itemized invoices from its suppliers for cleaning products, which equal the amounts charged to the respondent in the May and June 2018 invoices.
19. I am satisfied the applicant has met the burden of proving its claim for \$2,240.94, based on the invoices and service logs in evidence. I order the respondent to pay this amount. As there is no written contract, there is no specific interest rate for late payments, so I find the applicant is entitled to pre-judgment interest based on the rates set out in the *Court Order Interest Act*, from September 7, 2018, the date of its formal demand for payment.
20. The applicant asks to be compensated for time spent pursuing this dispute. However, this is not the sort of expense the tribunal generally would order the respondent to pay. The tribunal does not usually allow parties to recover legal fees, nor does it award compensation for a party's time spent trying to resolve the dispute. I see no reason to deviate from that practice here. The applicant's claim for \$500 in time spent is dismissed.

21. Under section 49 of the *Act*, and the 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 and \$10.50 in dispute-related expenses for serving the Dispute Notice on the respondent.

ORDERS

22. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,402.09, broken down as follows:

- a. \$2,240.94 for outstanding invoices;
- b. \$25.65 in pre-judgment interest under the *Court Order Interest Act*;
- c. \$125.00 in tribunal fees; and
- d. \$10.50 in dispute-related expenses.

23. The applicant is also entitled to post-judgment interest, as applicable.

24. 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.

25. 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.

Andrea Ritchie, Vice Chair