



Civil Resolution Tribunal

Date Issued: May 9, 2019

File: SC-2018-008972

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crysler v. Westover*, 2019 BCCRT 557

B E T W E E N :

Donna Crysler

APPLICANT

A N D :

Cindy Westover

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payment of moving expenses.
2. The applicant, Donna Crysler, and the respondent, Cindy Westover, agreed to a combined move from their separate homes in BC's lower mainland into the

respondent's new home on Vancouver Island. The applicant says she agreed to rent a room in the respondent's home for \$800 per month.

3. The applicant says she and the respondent agreed to equally share the \$3,000 cost of 1 moving truck and two movers to move their combined belongings to Vancouver Island. The applicant says the parties later had a disagreement about whether the respondent's garden items should have been moved as part of the \$3,000 fee, and the respondent demanded that the applicant pay half the cost of moving the garden items, which did not fit on the original truck. The applicant says she refused, and the respondent asked her to live elsewhere.
4. The applicant says the respondent refused to pay her \$1,066.70, which is the balance the respondent owes for the original \$3,000 in moving costs. The applicant seeks an order for payment of \$1,066.70.
5. The respondent denies owing anything for moving costs. The respondent admits she agreed to share moving costs with the applicant, but says their agreement was that the applicant would arrange moving for all their combined items, with nothing left behind. The respondent says the applicant failed to do this, so the respondent had to pay for a second truck. The respondent says that after their disagreement, the applicant chose to move out.
6. Both parties are self-represented.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
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 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.

Tribunal Jurisdiction over Residential Tenancies

11. Generally, the tribunal does not take jurisdiction over residential tenancy disputes, as these are decided by the Residential Tenancy Branch (RTB). However, the *Residential Tenancy Act* (RTA) does not apply to this dispute. Section 4(c) of the RTA says it does not apply where the homeowner shares a kitchen or bathroom with the tenant. Also, I find the true substance of this dispute is not about the tenancy, but is about payment of moving costs, which I find fits within the tribunal's small claims jurisdiction as set out in section 118 of the Act.
12. For these reasons, I find the tribunal has jurisdiction to decide this dispute. For the same reasons, I make no findings in this decision about whether the applicant was evicted, or the circumstances of her moving out of the respondent's house. The parties disagree about whether there was a tenancy, and about the terms under

which the applicant was to stay in the respondent's home. I find that disagreement is not determinative of the moving cost claim at issue in this dispute, so I make no findings about it.

ISSUE

13. The issue in this dispute is whether the respondent must pay the applicant \$1,066.70 for moving costs.

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

15. The applicant says she told the respondent in advance of the move that the single truck, which cost \$3,000 with 2 movers, was not guaranteed to hold all the belongings from both of their households. The applicant says the respondent was aware before the truck left on September 16, 2018 that the respondent's garden items would not be moved.

16. The respondent disagrees, and submits as follows:

- a. The respondent told the applicant in person, on the phone, and in text messages that everything must go on 1 truck.
- b. The respondent asked the applicant to have her nephew D (the moving truck driver) come look at her belongings to ensure they could go on the single truck. The respondent offered to pay for D's time and travel for this review, but the applicant did not arrange it, and instead said D was a professional and the respondent should trust him.
- c. The respondent could not arrange D's visit because she did not have his contact information.

- d. The applicant never told her there was no guarantee that all their belongings would not fit onto the single truck. In declining to arrange a pre-move visit by D, the applicant said, “there is no need to be anxious, it will all get on.”
17. The parties agree that the respondent’s garden items did not fit on the original truck, and had to be moved later in another truck.
18. The applicant says the respondent agreed to pay \$1,500 for the move. The applicant says the respondent paid \$300 in cash on September 15, 2018, leaving a balance of \$1,200. The applicant also subtracts \$133.30 as a pro-rated rent payment for the 5 days she stayed at the respondent’s house. She says this leaves a debt of \$1,066.70, which the respondent has failed to pay.
19. The respondent agrees that her half of the move was supposed to cost \$1,500, and that she paid \$300 of this amount on September 15, 2018. In her submissions to the tribunal, the respondent wrote that \$400 was to be deducted from the applicant’s September 2018 rent, and the remaining \$800 would be deducted from the applicant’s October 2018 rent. This is consistent with the text messages provided by the applicant, which show that on September 12, 2018, the respondent agreed to pay \$300 of the moving costs in cash, and that the rest would be paid as rent deductions in September and October.
20. The text messages in evidence show that after the move, the applicant wrote that she would not pay any of the costs of moving the respondent’s garden items, and the respondent replied, “it is best that you move elsewhere.” After that, the applicant agreed to move out, and sent a text message asking the respondent to pay her \$1,066.60. The applicant’s text messages show that this was her calculation of the moving costs owed, as rent reduction no longer applied since she was leaving.
21. Based on the evidence before me, I find that the applicant has proven her claim for \$1,066.70 in moving costs, on a balance of probabilities. My reasons follow.
22. The respondent’s primary defence is that she says the applicant promised that all of the respondent’s belongings would go on the single truck. Thus, the respondent did

not get the full benefit of the promised arrangement, and had to pay more money to rent a U-Haul truck and move the remaining items later. I accept that the respondent incurred additional moving costs, based on the receipts she provided. However, I find the weight of the evidence does not show that the agreement between the parties included a guarantee that all the respondent's items would be hauled as part of her \$1,500 payment. There is insufficient evidence before me of such a guarantee, which the applicant denied in her subsequent text message. The applicant wrote, "we agreed to try your house for 1500 I am not a miracle worker."

23. I place some weight on the applicant's text, as the respondent has provided no contrary evidence. While the respondent says she told the applicant in person, on the phone, and by text that it was necessary for all her items to be moved as part of her \$1,500 payment, she did not provide any text messages showing such statements. She also provided no details, such as dates or times, to confirm she made such statements in person or by phone. Since the respondent has not provided evidence that the applicant guaranteed that all items would be moved, I am persuaded by the applicant's text message, which says their agreement was that they would "try" to move the respondent's items for \$1,500.
24. For this reason, I find the applicant did not offer a guarantee that all items would be moved, so the respondent is obligated to pay her full share.
25. The respondent says she refunded the applicant \$800 in cash at the time she moved out. The applicant denies this, and says that while the respondent offered her \$600 in cash, she did not take it because it was not the full amount owed. The respondent has provided no evidence, such as a receipt, to prove she paid the applicant \$800. While the applicant bears the burden of proving her claim, the defendant bears the burden of proving her defence, including the defence of payment. I find the defendant has not met this burden, so I conclude that she did not pay the applicant \$800.

26. For all of these reasons, I conclude that the respondent must pay the applicant \$1,066.70 in moving expenses. The applicant is entitled to pre-judgment interest on this sum under the *Court Order Interest Act* (COIA), from September 21, 2018.
27. The respondent says the applicant's dog soiled the carpets in the bedroom and front foyer, which required professional cleaning. The respondent did not file a counterclaim, and did not provide proof of the damage, such as photos of the damage or a report from the cleaner. I therefore make no order for set-off of cleaning costs.
28. As the applicant was successful in this dispute, in accordance with the Act and the tribunal's rules I find she is entitled to reimbursement of \$125 in tribunal fees. The applicant also claimed \$10.50 for mailing the Dispute Notice, which I find reasonable in the circumstances, so I order reimbursement of that amount as a dispute-related expense.

ORDERS

29. I order that within 30 days of this decision, the respondent pay the applicant a total of \$1,213.77, broken down as follows:
 - a. \$1,066.70 in debt,
 - b. \$11.57 in pre-judgment interest under the COIA, and
 - c. \$135.50 as reimbursement of tribunal fees and dispute-related expenses.
30. The applicant is entitled to post-judgment interest under the COIA, as applicable.
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.

Kate Campbell, Tribunal Member