Civil Resolution Tribunal

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File: SC-2018-000192

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *CHIRDARIS v. 112792 Canada Inc. dba AMJ Campbell Van Lines*, 2019 BCCRT 650

B E T W E E N :

MARIA CHIRDARIS

APPLICANT

A N D :

112792 Canada Inc. dba AMJ Campbell Van Lines

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, Maria Chirdaris, was a member of the Royal Canadian Mounted Police (RCMP) who relocated from the lower mainland to the interior of British Columbia. The federal government arranged for and paid to move her belongings.

The respondent, 112792 Canada Inc. dba AMJ Campbell Van Lines, was one of the companies responsible for moving and storing the applicant's belongings.

2. The applicant says that the respondent falsely alleged that there was mould and a rodent infestation in her storage unit. The applicant says that the respondent required her to hire experts to disprove the allegation, which caused a delay in the move. The applicant claims $2,424, broken down as follows:

    a. $768 to refund the amount she paid to the respondent for the day that its employees were unable to proceed with the move.

    b. $556 for the cost of a mould consultant's report.

    c. $300 for damaged items.

    d. $300 for lost wages.

    e. $500 for punitive damages.

3. The respondent says that it complied with its contract with the federal government. The respondent asks that I dismiss the applicant's claims.

4. The applicant is self-represented. The respondent is represented by a person who I infer is an employee.

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*. 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. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 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.

ISSUE

9. The issue in this dispute is whether the applicant is entitled to any of the damages claimed.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

11. As mentioned above, the applicant was a member of the RCMP who was transferred from the lower mainland to the interior. The federal government contracted with the respondent to move her belongings as part of her employment benefits.

12. As part of the move, the applicant's belongings were stored at a storage facility in Coquitlam. The respondent did not operate the storage facility and did not participate in moving the applicant's belongings from her home to the storage facility.

13. The respondent's employees attended on October 5, 2017, to load the applicant's belongings for the move to Revelstoke. The respondent says that its employees suspected both mould and a rodent infestation in the storage unit. They observed discolouration on a box spring, scratched boxes, and debris that they suspected were rodent droppings.

14. The employees refused to move any of the applicant's belongings and left. The respondent says that its standards of work, which are mandated by the federal government, required the employees to stop working until the applicant could confirm that there were no hazardous materials present.

15. The applicant says that the respondent required her to get mould and rodent experts to provide reports before they would move any items. The applicant arranged for a mould and bacteria consultant to test the box spring, at a cost of $556.50. The applicant provided a report that concluded that there was no mould present on the box spring. It was simply dirty.

16. The mould consultant did not address the presence of rodents and, contrary to her submissions, there is no evidence before me that the applicant hired a rodent consultant. Rather, the storage company apparently took responsibility for the rodent problem. According to emails between the respondent and the federal government, the storage company arranged for and paid for a pest control company to treat the storage locker. It appears that the respondent's employees' concerns about rodents were well founded.

17. After being satisfied that the conditions were safe for its employees, the respondent was prepared to continue with the move. However, the respondent demanded that the applicant pay $768.08 for its employees' attendance on October 5, 2017. The

applicant felt that she had no choice and reluctantly paid the amount on October 16, 2017. The respondent proceeded with the move.

18. There is no suggestion that the applicant and the respondent had a contract, and I find that they did not. Rather, the respondent contracted with the federal government. The respondent's contract with the federal government is not in evidence.

19. With respect to the $768.08 charge, the respondent's argument is essentially that it was not the respondent's fault that its employees wasted time attending the storage unit on October 5, 2017, and that someone had to pay for it. The respondent says that the federal government told it to charge the applicant directly, so that is what the respondent did.

20. However, there is no evidence other than the respondent's assertion to support its argument that the federal government told it to charge the applicant for the employees' wasted time. As mentioned above, the respondent provided other emails from the federal government employee responsible for the arranging the move, but nothing about having the applicant pay for the wasted time. I draw an adverse inference against the respondent on this point because this evidence should have been easily available and there is no explanation given for why it was not provided.

21. In any event, even if the federal government did tell the respondent to charge the applicant, it would not necessarily mean that the applicant was required to pay the charge. As mentioned above, the respondent had no contractual relationship with the applicant. The respondent has not provided a reason why the cost of its employees' wasted time was the applicant's responsibility as opposed to the federal government's responsibility. I find that whether the respondent was entitled to be reimbursed for the wasted attendance is a contractual matter between it and the federal government. Again, that contract is not in evidence, so I make no comment about whether the respondent is entitled to reimbursement from the federal government. For the purposes of this dispute, absent a specific agreement with the

applicant, I find that the respondent had no legal basis to demand that the applicant pay for its employees' wasted time. In the circumstances of this dispute, I find that the applicant's payment of the charge does not mean that she agreed to it. She had no reasonable alternative because she needed her goods moved.

22. In addition, even though the respondent's employees acted reasonably in seeking assurance that it was safe to move the applicant's belongings, the rodent infestation was not the applicant's fault. Therefore, even if the respondent's employees had not suspected mould on the applicant's box spring, they would not have been able to proceed with the move because of the rodent infestation.

23. Accordingly, I find that the respondent was not entitled to charge the applicant for the employees' wasted time. I note that the actual amount that the applicant paid was $768.08, not the $768 she claimed in this dispute. The applicant presumably rounded down but she is not entitled to more than she claimed. I order the respondent to reimburse the applicant $768.

24. With respect to the cost of the mould consultant, the applicant argues that because the consultant determined that there was no mould, the respondent should have to pay for the report. I disagree. I find that it was reasonable for the respondent to insist that the applicant ensure that the box spring was safe to move. Just because the box spring was ultimately deemed safe does not mean that the respondent should have to pay for the assessment and report. I dismiss this claim.

25. As for the applicant's claims for damaged items, she provided photographs that she says shows the damaged items. While it does appear that some items were damaged in the move, it is undisputed that more than one company was involved in the move. I therefore find that the applicant has not proven that the respondent damaged any items. She also provides no evidence of the value of the items that were damaged. I dismiss this claim.

26. The applicant also claims $300 in lost wages. She did not provide any objective evidence that she lost wages because of the delayed move. In any event, I have

found that the respondent acted reasonably in assuring that it was safe for its workers to move the respondent's items. Therefore, I dismiss this claim.

27. Finally, the applicant seeks punitive damages. In *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 SCR 1085, the Supreme Court of Canada said that the purpose of punitive damages is to punish extreme conduct that is worthy of condemnation. The Court also said that punitive damages may only be awarded to punish harsh, vindictive, reprehensible and malicious behaviour. I find that there is no evidence that the respondent engaged in any conduct deserving of punishment. I dismiss this claim.

28. 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. The applicant has been partially successful, so I find the applicant is entitled to reimbursement of half of its $125 in tribunal fees for a total of $67.50. The applicant did not claim any dispute-related expenses.

ORDERS

29. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $852.83, broken down as follows:

    a. $768 as a refund for the October 16, 2017 charge,

    b. $17.33 in pre-judgment interest under the *Court Order Interest Act* from October 16, 2017 to the date of this decision, and

    c. $67.50 in tribunal fees.

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

31. I dismiss the applicant's remaining claims.

32. 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.

33. 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.

Eric Regehr, Tribunal Member