



Civil Resolution Tribunal

Date Issued: July 8, 2019

File: SC-2018-007997

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *William Davies & Sons Ltd v. The Burnaby Winter Club*, 2019 BCCRT 820

B E T W E E N :

William Davies & Sons Ltd

APPLICANT

A N D :

The Burnaby Winter Club

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for snow removal and salting services the applicant, William Davies & Sons Ltd, provided to the respondent, The Burnaby Winter Club. The applicant claims \$4,761.54, plus 24% annual interest.

2. The respondent admits it contracted with the applicant, but says it cancelled the applicant's services and that the applicant's bookkeeping is sloppy. The respondent denies owing the applicant any money.
3. The applicant is represented by Myles Kirk-Gushowaty, who I infer is a principal or employee. The respondent is represented by Terry Shein, an employee or principal.

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. Some of the evidence in this dispute amounts to a "he 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.

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: 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 in this dispute is to what extent, if any, the respondent owes the applicant \$4,761.54, plus 24% annual interest, for snow removal and salting services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the burden of proof is on the applicant to prove its claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.
10. On January 4, 2017, the parties signed an agreement for the applicant to provide snow removal and salting services to the respondent. The "level of service" selected was level 1, which required the applicant to clear snow at 1-inch accumulation and perform regular morning frost checks at any sub-zero temperatures.
11. The agreement also provides that the respondent will pay for snow removal and salting services and that the work is done on an "automatic call out basis" only and at the applicant's discretion, "using the level of service chosen as a guideline".
12. The agreement states it is continuous, but may be terminated at any time with 7 days' written notice. The rates in the agreement vary depending on the type of service. The agreement states 24% yearly interest applies to accounts overdue past 30 days.

13. On March 14, 2017, the respondent emailed the applicant and cancelled “this service effective immediately” and thanked the applicant for its fine work over the past months.
14. The respondent says that despite cancelling the applicant’s services, the applicant had them “under contract the following September/October”. It is also true the applicant emailed the respondent on October 22, 2017 saying that they were “still under contract” to perform services for the upcoming winter season. This appears to have been sent in error. The material point is that there is no evidence the applicant performed services or charged for any services between April and October 2017. The evidence shows the respondent attempted to renew service with the applicant in November 2017, for plowing only, but the applicant explained they provide only combined plowing and salting services. While the respondent says this is “nonsensical”, nothing turns on it. The issue in this dispute is whether the applicant is entitled to payment for services performed from January to March 2017.
15. In particular, the applicant claims payment for their invoices dated between January 2 and March 4, 2017. After taking into consideration the respondent’s payments, the respondent’s account balance is \$4,761.54, the amount claimed in this dispute (plus interest).
16. The applicant provided weather forecast evidence for the service dates set out in their invoice, which I find shows its attendance was in line with the parties’ agreement.
17. While the respondent suggests the contract’s provision about salting and “heavy frost” is ambiguous, I do not agree. The signed agreement clearly allows for the applicant to exercise its discretion and that the “level 1 service” is a guideline. There is no evidence before me that the applicant acted unreasonably or in breach of the contract.
18. The respondent also alleges that it cancelled the salting service “immediately” after service was started (which was in January 2017). It appears the respondent says it

did so by telephone. I find the friendly tenor of the March 14, 2017 cancellation letter reads as though that letter was the first cancellation, and so I find it is inconsistent with the suggestion the respondent had earlier cancelled salting services. In any event, the agreement requires cancellation on 7 days' written notice, not verbal.

19. Finally, the respondent alleges sloppy bookkeeping and that the respondent's accounting clerk admitted this and said they would not pursue the claim. The applicant denies this. I find this assertion is unsubstantiated based on my review of the invoice and the applicant's statement of account. The applicant issued timely invoices and the respondent does not dispute the amount of any particular invoice. I find the applicant is entitled to payment of the \$4,761.54 claimed.
20. Under the agreement, the applicant is also entitled to 24% annual interest. I find the applicant is entitled to \$238.46 in interest. While the applicant did not provide an interest calculation, calculated roughly from March 30, 2017 the interest would total over \$2,300. However, the tribunal's small claims monetary limit is \$5,000, and that limit includes both a principal debt and contractual interest (but exclusive of *Court Order Interest Act* interest, tribunal fees, and dispute-related expenses). See my earlier decision in *Easyfinancial Services Inc. v. Rosvold*, 2019 BCCRT 68. Interest under the *Court Order Interest Act* does not apply where there is an agreement on interest, as here.
21. In accordance with the Act and the tribunal's rules, as the applicant was successful I find it is entitled to reimbursement of its \$175 in tribunal fees. There were no dispute-related expenses claimed.

ORDERS

22. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$5,175, broken down as follows:
 - a. \$4,761.54 in debt,
 - b. \$238.46 in 24% contractual annual interest, and

c. \$175 in tribunal fees.

23. The applicant is 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.

Shelley Lopez, Vice Chair