



Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2019-001328

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robin Tremblay dba TMS Moving v. Stoker*, 2019 BCCRT 1036

B E T W E E N :

Robin Tremblay (Doing Business As TMS Moving DBA Rob Tremblay)

APPLICANT

A N D :

Mellisa Stoker

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, ROBIN TREMBLAY (Doing Business As TMS Moving DBA Rob Tremblay), provided moving services to the respondent, MELLISA STOKER, on May 7, 2018 for a total of \$879.27. The applicant says the respondent has only paid part of this amount and owes \$468.91 including contractual interest.

2. The respondent says the applicant estimated the move would cost between \$160 and \$180 and that it did not take as long as the applicant claims to move her belongings.
3. Both parties are self-represented.

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* (CRTA). 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 "they said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and 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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

8. The issue in this dispute is whether the respondent must pay the applicant \$468.91 including 24% contractual interest for moving services.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. The respondent filed a Dispute Response but chose not to provide evidence or submissions, despite having the opportunity to do so. In this situation, an adverse inference may be drawn against the respondent, which means it is generally assumed that the applicant's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default, so the respondent's liability is assumed. That said, I have considered the respondent's Dispute Response, since it was filed while she was still participating in this dispute.

12. The applicant says that in April 2018 the respondent hired them to move her belongings from her home to its storage facility, which I find to be a distance of approximately 13 kilometers. The applicant says this took 7.75 hours and it charged the respondent \$1,137.86, which she has paid.
13. The applicant says that in May 2018 the respondent hired the applicant to move her belongings from its storage facility to a different address in her home city, which I find to be a distance of approximately 1 kilometer. The applicant says this took 7.75 hours, but it charged the respondent \$879.27, which was less than the cost of the first move because it used fewer movers.
14. In her Dispute Response the respondent says the applicant told her the services would take between 30 and 45 minutes to remove her items from storage and approximately 90 minutes to unload her items at her destination. She says the applicant estimated the cost would be between \$160 and \$180. She says the applicant was scheduled to arrive at her storage facility at 9:30 a.m. on May 2, 2018, but it did not show up and later apologized for having the wrong date in their records. She says the applicant said it would be at her storage facility at 9:30 a.m. the next day, that is May 3, 2018. The respondent says the applicant did not arrive at her final destination on May 3, 2018 until 4:00 p.m. She says the applicant charged her from 9:30 a.m. to 4:00 p.m. to remove her belongings from storage and bring them to her destination, but she says, "there is no way it could have taken that long." The respondent says it took the respondent 90 minutes to unload her belongings at her destination, as expected.
15. The applicant submitted correspondence in which the respondent says the applicant sent one mover with a broken arm who was there by himself from 9:30 a.m. to 11:30 a.m. She said a second person did not arrive until 12:45 p.m., and a third and fourth person did not arrive until after 2:30 p.m.
16. On the contrary, the applicant says its 2-person crew arrived at the storage facility on the scheduled moving day at 9:00 a.m. and opened the door to the respondent's storage locker at 9:30 a.m. The applicant says its 2 crew members unloaded the

storage locker, loaded the first van and arrived at the respondent's final destination at 2:00 p.m. It says that at 12:30 p.m. 2 other crew members arrived at the storage facility to load a second van, then drove to the respondent's final destination where they helped the first 2 crew members unload until 4:00 p.m. The applicant says that having paid for its services the month prior the respondent knew its hourly rate and approximately how long it would take to relocate her belongings, so she should not have been surprised how long it took.

17. On balance, and particularly because of the adverse inference against the respondent, I prefer the applicant's version of events.
18. The applicant submitted its May 7, 2018 invoice for \$879.27 which says payment is due upon completion, accounts unpaid for 30 days after the billing date are subject to an \$8.00 administration fee, and that accounts unpaid for longer than 1 month are subject to 2% interest per month, or 24% interest per year. However, the evidence indicates that the respondent had a \$162.84 credit on her account, so the total amount owing was \$716.43, not \$879.27.
19. The applicant says that approximately 1 month after the second move the respondent claimed damages to some of her belongings but refused the applicant access to inspect the alleged damage. I find the applicant's evidence supports its claim, and since the respondent did not submit evidence to support any claims for damage, I decline to address this issue further.
20. It is undisputed that the respondent paid the applicant \$350 on July 3, 2018 and another \$50 on September 21, 2018. This left a \$316.43 balance owing, which I find the respondent must pay to the applicant.
21. I also find that the \$8.00 administration fee on late payments stated in the May 7, 2018 invoice applies in this case, bringing the total owing to \$324.43.
22. I also find the claimed 24% per year contractual interest rate applies to the \$316.43 principal owing. The applicant submitted multiple invoices charging the respondent interest from May 7, 2018 to February 14, 2019 when it filed its Dispute Notice.

However, I note that according to the terms on the May 7, 2018 invoice, interest did not start accruing until June 7, 2018. It also appears that the applicant has compounded the interest owing, but the interest clause on the May 7, 2018 invoice does not refer to compound interest. I find the applicant is entitled to \$93.63 in contractual interest, calculated from June 7, 2018 to the date of this decision.

23. In her Dispute Response the respondent says the applicant harassed and intimidated her on social media and through emails and text messages, which she could provide as evidence. However, as noted above, the respondent did not submit any evidence or arguments, so I decline to address these issues in this dispute.
24. Under section 49 of the CRTA and 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. Since the applicant was generally successful I find it is entitled to reimbursement of \$125 in tribunal fees. It has not claimed any dispute-related expenses.

ORDERS

25. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$543.06, broken down as follows:
 - a. \$324.43 as payment of the balance of the invoice plus an administrative late fee,
 - b. \$93.63 in contractual pre-judgment interest at 24% per year, and
 - c. \$125 in tribunal fees.
26. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
27. Under section 48 of the CRTA, 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.

28. Under section 58.1 of the CRTA, 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.

Sarah Orr, Tribunal Member