Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chia Ching Wang, dba I Move You v. Carpenter*, 2019 BCCRT 1067

B E T W E E N :

Chia Ching Wang (Doing Business As I Move You)

APPLICANT

A N D :

Billy Carpenter

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. This is a dispute about moving expenses.

2. The applicant Chia Ching Wang, doing business as I Move You, says he provided moving services to the respondent Billy Carpenter, but the respondent failed to pay the invoiced $2,255.71.

3. The respondent says the applicant was negligent in handling his property during the move, damaging a cabinet and causing a paint spill on the floor. The respondent says he did not pay the applicant because the property damage goes "beyond the value of their invoice."

4. The applicant and respondent each represent themselves.

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* (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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Here, the question of whether the applicant caused the paint spill and damaged the cabinet is disputed through competing witness statements. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.

7. 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. In *Yas* v. *Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

8. 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.

9. 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.

ISSUES

10. The issues in this dispute are:

    a. whether the applicant provided moving services in a satisfactory manner, such that the respondent must pay the $2,255.71 invoice, and

    b. whether, or to what extent, the respondent is entitled to a discount against the invoice, due to deficiencies in the applicant's moving services.

EVIDENCE AND ANALYSIS

11. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer to them here only as I find necessary to explain my decision.

12. Moving services must be provided to a reasonable standard based on the parties' agreement.

13. On June 6, 2017, the applicant provided the respondent with a "labour only" quote to move items from the respondent's Vancouver workshop to a location in

Squamish. The parties agreed, based on the quote and their other communications, that:

a. the applicant would provide 3 movers at $31 per hour each, plus a 10% gratuity, and

b. the respondent would rent and insure a 5-ton truck for the move.

14. On June 7, 2017, the applicant provided 3 movers for the move. Around noon, the applicant went to the workshop site to check on how the job was progressing. The applicant says that the respondent told the applicant that everything was going "great". The respondent says that at some point during the move, he cautioned one of the movers that they may have problems in future with damage being done to clients' property. Given the evidence of mover CG, discussed below, I prefer the applicant's evidence. I find that all was going well with the move at this stage.

15. On June 8, 2017, the applicant emailed the respondent an invoice for $1,020.44 for services provided on June 7. The invoice shows that 3 movers were provided at $93 per hour, from 9-5:30, plus 1 hour of travel time. A 10% gratuity of $88.35, plus GST of $48.59, was included on the invoice.

16. On the morning of June 9, 2017, the applicant texted the respondent giving him the figure of $1,020.44 for the first day of moving. The respondent replied saying "Got it. I need 3 guys at the shop at 8am."

17. The respondent says that he thought that the movers were unskilled and raised the concern with CG. CG disputes this account. I find that, based on the respondent's text message requesting that the move continue, he did not raise any concerns, on June 9, 2017, with the quality of service being provided.

18. On June 9, 2017, the applicant provided the same 3 movers to complete the job. The respondent did not dispute, and I find, that, that afternoon, the applicant called the respondent to check in. The respondent said the movers would be finishing up soon and that he would e-transfer the payment. Again, I find that the respondent did not raise any concerns about the quality of the moving services.

19. On June 9, 2017, the applicant texted the respondent the $1,235.27 figure for the second day of the move. The respondent did not reply.

20. On June 11, 2017, the applicant emailed the respondent an invoice of $1,235.27 for moving services provided on June 9, 2017.

21. On June 18, 2017, the applicant texted and emailed the respondent to say he had not heard back from the respondent about the outstanding invoices.

22. The parties agree that, on June 18, 2017, the respondent raised a concern that paint had been spilled during the move. The applicant checked with his three movers, who denied any paint spill. The applicant asked for photographs of the damage so that he could investigate it.

23. On June 20, 2017, the respondent replied and said that “as discussed” he would “tally” the damage by the applicant’s staff and send both his invoice for the damage and his payment “early next week.”

24. The applicant responded on June 20, 2017, by email, to say that his movers denied causing any damage.

25. On March 20, 2018, the respondent emailed the applicant saying that he had “photos of the damage”. The respondent did not attach any photographs to the email. The respondent also wrote that the floor in the mezzanine was damaged “by leaving a can of finish on its side.”

26. The parties agree that the respondent did not pay any of the $2,255.71 owing for the moving services.

27. The respondent says he did not notice the paint spill or damage to the cabinet for one week after the move because he did not return to the new shop until then, due to commitments at the old site. He also says the move was from a 4,500 square foot space to a 2,200 square foot space, leaving the new space “completely full”. The respondent says he noticed the damaged only after returning to the new shop and starting to “move things around.”

28. Turning first to the question of the paint spill, I find that only one of the movers, CG, moved most of the paint, based on his evidence.

29. CG provided a written statement that he and the other movers were careful, and that nothing moved was damaged or scratched. CG agreed that he moved some paint tins from the ground floor to the second floor. CG wrote that he would have remembered if any paint tins spilled, as this would have required immediate assistance. CG wrote that once the job was complete, the respondent thanked him for his good work and shook his hand. The respondent did not raise concerns about spilled paint or any other damage.

30. The respondent filed a statement from his employee TM who the respondent says was part of the move from Vancouver to Squamish. TM wrote that, upon inspection a week after the move, there was some damage to the veneer on one cabinet, and that "we had paint and stain spilling from a pallet which was moved by hand, from the ground floor to the mezzanine due to inadequate stacking."

31. TM's statement is not first-hand or direct evidence of the cabinet being damaged during the move, nor of paint or stain being spilled. As well, TM's evidence is inconsistent with the respondent's own evidence. The respondent did not describe paint and stain spilling from paint cans in an incorrectly stacked pallet but specified that a can of finish had been left on its side.

32. In an email to the applicant sent July 23, 2019, the respondent says he will "send a photo of the stain in the floor of the mezzanine." Prior to this mention of the photograph, the respondent did not provide the applicant a photograph of the stain.

33. In this proceeding, the respondent provided a photograph of a plywood type floor, with a dark square stain on it. It is not clear when the photograph was taken.

34. I do not accept that the pallets were inadequately stacked. The respondent was on site both days during the move and shook hands with CG at the end of the job. I find that if he wanted the items placed differently, he would have directed the movers to do so.

35. The respondent says that when he returned to the new shop about a week after the move, he was unable to occupy the space due to the volatile organic compounds (VOCs) the spill produced.

36. The respondent says that it took him a week, running fans 24 hours a day and with doors open during the day, before the new space was usable. The respondent provided no records to prove this interruption in use of the space.

37. As well, the respondent refers to “we” discovering the stain. The statement from TM refers only to a spill from a pallet and makes no mention of the VOCs or having to run fans in the space.

38. While I accept that a paint can may have been knocked over or developed a leak at some stage, I find, on a balance of probabilities, that the movers did not cause the paint or stain spill.

39. I find that there was no paint or stain spill at the time that the move was completed. I base this finding on CG’s statement, and the fact that the respondent did not raise any concerns with the applicant on day one in person, or on day two by telephone. If a stain or paint spill with the “unbearable” smell that the respondent describes had occurred by then, I find that he would have noticed it and reported it to the applicant.

40. I find it at least equally likely that the paint can spilled between the time of the move and when the respondent noticed it, caused by moving around items packed into the much smaller space.

41. As for the damage to the cabinet, the respondent submitted a set of photographs, taken July 4, 2017. The 2017 photographs show a small area of damage to the veneer on the cabinet’s back top corner, and some lifting of the veneer on the bottom of the cabinet on the same side.

42. The respondent also submitted a set of photographs of the cabinet that were taken in July 2019. These photographs show some limited damage to the cabinet’s veneer on the top back corner and at the bottom on the same side.

43. The 2019 photographs show more extensive damage to the cabinet's veneer than those taken in 2017. I find that the respondent did not repair the cabinet during this period, and so some of the damaged veneer peeled off.

44. Based on the 2017 photographs, I find that the cabinet had some minor damage to its veneer about one month after the move.

45. However, the respondent describes seeing the movers put his cabinet on end in the moving truck. He did not stop them at the time to raise a protest about how it was loaded. Given my findings about the respondent's inconsistent evidence about the paint spill, I prefer the applicant's evidence that nothing was damaged during the June 2017 move. I find that the cabinet was not damaged during the move, but at some other time.

46. Even if I had found that the damage was caused by the move, the respondent did not prove the value of repairs needed to the cabinet, nor the cost of cleaning up the paint spill.

47. Based on all of the evidence, I find that moving services were provided to a satisfactory standard consistent with the parties' agreement. A gratuity is usually paid as an expression of thanks, and not directly to compensate the work. However, the parties agreed on the gratuity amount in advance as part of their contract, to be paid on completion of the move. Because I have found the move was satisfactorily completed, I also find that the gratuity is payable as part of the invoice amount.

48. I find that the respondent must pay the $2,255.71 to the applicant, within 15 days of this decision.

49. The *Court Order Interest Act* applies to the tribunal. Since there was no agreement between the parties for contractual interest, I find that the applicant is entitled to pre-judgement interest on the $2,255.71 from July 11, 2017, which is 30 days after both invoices were delivered, to the date of this decision. This equals $60.40.

50. 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. I find the applicant is entitled to reimbursement of $125 in tribunal fees and $45.15 in dispute-related expenses for courier and registered mail expenses to deliver the Dispute Notice, which I find reasonable.

ORDERS

51. Within 15 days of the date of this order, I order the respondent to pay the applicant a total of $2,486.26, broken down as follows:

    a. $2,255.71 in payment for the moving services, agreed gratuity and tax,

    b. $60.40 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $170.15, for $125 in tribunal fees and $45.15 for dispute-related expenses.

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

53. 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.

54. 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.

Julie K. Gibson, Tribunal Member