Civil Resolution Tribunal

Date Issued: September 18, 2019

File: SC-2019-003433

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *NSD Disposal Ltd. v. Fine Signs Ltd.,* 2019 BCCRT 1103

B E T W E E N :

NSD DISPOSAL LTD.

APPLICANT

A N D :

FINE SIGNS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a contract for waste disposal services. The applicant, NSD Disposal Ltd., says the respondent, Fine Signs Ltd., terminated the parties' contract before its expiry date, put prohibited "green waste" into the bin, and improperly

placed the waste bin on property owned by the City of Surrey (city). The applicant claims a total of $2,460.42.

2. The respondent says the applicant regularly provided poor service, with unreliable pick-ups. The respondent also says the applicant's rates were not fair market value and that some of the applicant's claims are a routine cost of doing business.

3. The parties are each represented by 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* (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. In the circumstances here, I find that I can fairly decide this dispute based on the written evidence and submissions before me.

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 do one or more of the following where permitted under section 118 of the CRTA: 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 $2,460.42 for waste disposal services and related charges.

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. As noted above, the applicant claims a total of $2,460.42, broken down as follows:

    a. $226.82 in debt for an outstanding balance, which the respondent initially admitted owing,

    b. $651.60 in liquidated damages, because the respondent terminated the contract over a year early,

    c. $1,365 for bin relocation, bin removal, wheel repair, contamination, and "tracking",

    d. $210 for a city bylaw infraction related to the waste bin being left on city property, and

    e. $7 for a company search, a dispute-related expense for starting this tribunal proceeding.

11. The relevant chronology follows. The parties agree that on December 19, 2013 they entered into a 5-year contract, effective April 1, 2015 to March 31, 2020. The parties also agree that the respondent cancelled the contract before the end of the 5-year term. The service was for one 4-cubic yard garbage bin, at $53.50 monthly rate. The contract provided for other charges, such as for delivery.

12. The parties disagree about whether the contract permitted price increases as charged by the applicant during the contract's term. The respondent's position is that because the applicant allegedly provided poor service and unfairly charged price increases, it was entitled to cancel the contract.

13. First, while the respondent originally alleged in its Dispute Response that the applicant provided poor service with unreliable pick-ups, the respondent appeared to abandon that argument. In any event, I find there is no basis to conclude the applicant provided poor service.

14. Second, I find clause 10 of the parties' contract expressly provided for price increases on various grounds, with written notice to the respondent customer. The evidence shows the applicant gave the respondent written notice of reasonable annual increases as permitted by the contract. In particular, after April 1, 2015 the increases were usually about $9 annually, reaching $96 per month by January 1, 2019. I find the respondent breached the parties' contract when it cancelled it early.

15. While it may be that other companies charge less than the applicant, that is not determinative of the respondent's obligation to pay. Contrary to the respondent's assertion, I find there was no "overpayment" of $1,496.

16. I turn then to the substance of the applicant's claims.

$226.82 debt claim

17. The applicant claims $226.82 in debt for February and March 2019 service, each month at $112.90, which actually totals $225.80. I note the respondent initially agreed with this claim in its Dispute Response. The evidence shows the respondent cancelled the contract on March 15, 2019 and the applicant accepted that termination and claims liquidated damages as of April 1, 2019. The contract provides for monthly billing and the invoices were issued at the beginning of the month. I find the respondent owes $225.80 in debt.

$651.60 claim for liquidated damages

18. The applicant claims $651.60 in liquidated damages. This is 12 months at a $54.30 average monthly rate. Based on the applicant's invoices, I find $54.30 is 50% of the average of the last six months of billing, which is consistent with the formula provided under the contract's liquidated damages clause. The parties agree the respondent terminated the contract early and I have found the respondent had no grounds to do so. The claimed period covers April 1, 2019 to the contract's expiry on March 31, 2020. I allow this $651.60 claim.

$1,365 claim for bin relocation, bin removal, wheel repair, contamination, and trucking

19. The applicant claims $385 for "contaminant manual sorting, contaminant disposal", $350 for "bin relocation", $175 for "bin removal", and $240 for "labor cost after hours". These all relate to the respondent's moving the bin overflowing with green waste, twice, onto city property.

20. The contract states the respondent customer must not load hazardous material into the bin, which is defined in the contract to include any contaminant or pollutant. The contract states the respondent will be responsible to pay "any and all fines", and any charges related to handling of hazardous material. It is undisputed that "green waste", such as tree branches, was a contaminant.

21. The applicant says that on around January 9, 2019 the bin was reported as being contaminated with green waste. The applicant says it notified the respondent to clean the contamination and placed a contamination sticker on the bin. I accept this undisputed evidence, which is shown in the photos in evidence.

22. On January 23, 2019, the respondent emailed the applicant to "pick up your bin" on the "sidewalk" as the respondent said it did not need the bin any longer. I find it was the respondent who moved the bin off its property and onto city property, which is undisputed.

23. On January 30, 2019, the applicant emailed the respondent that it would charge $350 for relocating the bin from its “unsafe position on city boulevard”. In a separate email the same day, the applicant told the respondent it would not be responsible if the city intervened and that the applicant would forward any charges related to the bin’s removal and relocation. In response, the respondent simply demanded a refund of past payments and did not address the bin’s location on city property. I accept the applicant’s undisputed evidence that it relocated the bin to the respondent’s property given its unsafe location on city property. I allow the $350 for bin relocation as claimed, particularly as the respondent ignored the warning that this would be the applicant’s charge if the respondent did not move the bin.

24. It is undisputed that around February 27, 2019, the respondent then moved the bin again onto city property, this time onto a grassy boulevard dividing a two-lane roadway, as shown in photos in evidence. The photos show tree branches sticking high out of the bin.

25. On March 9, 2019, the city issued a $210 fine and emailed the applicant about the bin’s unsafe location on the roadway. I address the $210 fine claim below.

26. The applicant says that given the city’s fine and the bin’s unsafe location, it took steps to remove the bin. I accept this was reasonable and allow the $175 charge for bin removal. I dismiss the applicant’s claim for $240 for after-hours labour, because it has provided no supporting evidence to support this claim, such as employee time records, or why it could not reasonably remove the bin during business hours, given the city’s email was before 2 p.m.

27. As for the applicant’s $385 for manually sorting the contaminated bin, I find this is excessive. The applicant provided no documentation as to its costs for doing this work and based on the photos the tree branches would not likely have been difficult to remove. The $385 charge is not expressly set out in the contract, though charges for dealing with the hazardous material is set out, as noted above. On a judgment basis, I find $150 is a reasonable sum for sorting the contaminated material.

28. The applicant claims $150 for damage to two of the bin's wheels. Based on the respondent's movement of the overfilled bin to various locations over curbs, and the photos in evidence, I accept that the respondent damaged the wheels. I find this was not "reasonable wear and tear" that was the applicant's responsibility under clause 5 of the contract. While the applicant did not provide any invoice to show the wheels' value, on a judgment basis I find $150 is reasonable for 2 wheels and I allow this as claimed.

$210 fine by the city

29. As noted above, on March 9, 2019 the city fined the applicant $210 for the bin's unsafe placement on city property, as set out in the city's letter to the applicant.

30. Given the applicant's email in January 2019 and the terms of the parties' contract, I find the respondent is responsible for the $210 fine. The respondent moved the bin, twice, onto city property and has not explained why it ignored the applicant's communications that the bin needed to be moved. While the respondent indicated in late January 2019 that it was interested in ending the contract, it chose to move the bin to unsafe locations on city property and under the contract was responsible for it. I find the respondent must reimburse the applicant the $210 as claimed.

Interest, tribunal fees and dispute-related expenses

31. While the parties' contract permits 24% annual contractual interest on overdue accounts, the applicant did not claim interest in this dispute. So, the applicant is entitled to pre-judgment interest on the total $1,912.40 award, under the *Court Order Interest Act* (COIA). This equals $17.57, running from March 31, 2019 which I find is a reasonable date in the circumstances.

32. Under the CRTA and the tribunal's rules, as the applicant was largely successful I find it is entitled to reimbursement of $125 paid in tribunal fees. As noted above, the applicant claims $7 for a company search in order to determine the respondent's proper name for this dispute. I find this is a reasonable expense and I allow it.

ORDERS

33. Within 14 days of this decision, I order the respondent to pay the applicant a total of $2,061.97, broken down as follows:

    a. $1,912.40 in debt and damages,

    b. $17.57 in pre-judgment interest under the COIA, and

    c. $132, for $125 in tribunal fees and $7 in dispute-related expenses.

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

35. 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.

36. 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.

Shelley Lopez, Vice Chair