Civil Resolution Tribunal

Date Issued: September 23, 2019

Amended Decision Issued: September 24, 2019

File: SC-2019-002975

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cottle v. 2 Burley Men Moving Ltd.*, 2019 BCCRT 1118

B E T W E E N :

DANIEL COTTLE

APPLICANT

A N D :

2 BURLEY MEN MOVING LTD.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicant Daniel Cottle hired the respondent 2 Burley Men Moving Ltd. to move his household goods by weight. The applicant says that the respondent did not

weigh his goods and overcharged him. He claims a refund of $1,160.25 based on what he says is a reasonable estimate of the load weight at the agreed-upon weight of $0.65 per pound.

2. The applicant also says the load was delivered to his new home late, and claims $300 for accommodations and $306 for meals. Finally, the applicant claims $250 for a lost patio set.

3. The respondent says that it billed the customer correctly by weight. It says it is not responsible for any losses resulting from late delivery. It also says that the applicant has not proven that it ever had the patio set, and in any event it is not responsible for lost items in boxes.

4. The applicant is self-represented. The respondent is represented by Cheryl Alvarez, whom I infer is a principal or 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* (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. 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, 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

9. The issues in this dispute are:

    a. Did the respondent bill the applicant correctly? If not, how much did it overcharge?

    b. Is the respondent liable for the applicant's losses due to the late delivery of goods?

    c. Is the respondent liable for the applicant's allegedly lost patio set?

EVIDENCE AND ANALYSIS

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

Did the respondent bill the applicant correctly?

11. The applicant hired the respondent to move his belongings from Edmonton, Alberta to Victoria, British Columbia. There is no dispute that the rate was $0.65 per pound.

12. The applicant says that in May 2018 he called the respondent's long-distance moving coordinator, 'E'. He says E explained that the belongings from a typical 1-bedroom plus den like his would weigh, on average, 2,000 to 3,000 lbs and cost about $1,800. He says he was told that the respondent would weigh the items as they went onto the truck. He was assured that he would know the weight and the cost right away upon loading in Alberta.

13. On July 11 and 12, 2018, the applicant exchanged emails with E. Those emails confirmed the pick-up date of August 13 or 14, 2018 and the drop-off date of September 1, 2018. The respondent agreed to store the applicant's belongings between those dates. The applicant says around the same time he also spoke to E, who again assured the applicant that he would have proof of weight. The respondent does not dispute this evidence, so I accept it.

14. Given that applicant was paying by weight and was assured about proof of weight, I find it was an important term of the contract that the applicant would be provided with objective verification of the load weight.

15. A few days prior to the move, the parties arranged for pick-up on August 14, 2018 at 9:00 a.m. On the pick-up date, the applicant says the movers were polite and courteous and mentioned how well packed and wrapped all the items were. The applicant asked them when he would know the weight of his load. They said they would weigh it when they got back to Calgary. He asked again and they assured him that the load would be weighed before beginning the trip to BC. He also asked what they estimated the load to weigh and they said it would likely be higher than originally estimated - about 3,000-3,500lbs. The respondent provided no evidence to refute this, so I accept that the movers gave the applicant this estimate.

16. Later that day the applicant called the respondent's 'Calgary office manager/ dispatcher' (dispatcher) to mention the good service the movers had provided, and to ask about the weighing of the load. The applicant says the dispatcher assured him that the respondent would provide an accurate weight.

17. The applicant says as the delivery date approached he called the dispatcher on August 30 and August 31. He says the dispatcher first said he did not know where the truck was, but later said the load would be delivered on September 1.

18. On September 1, the applicant received a call from the dispatcher advising that the truck had broken down in Kamloops, BC. The applicant says he was later told by the movers that on August 31 they were actually dispatched to 'rescue' a broken down truck in Canmore, AB. In any event, the respondent does not dispute that the truck broke down at some point and did not arrive in Victoria until September 4.

19. The applicant says the when the movers arrived with his belongings on September 4, they said the billed weight of the load was 5,200 lbs. They also would not unload until he gave them payment in full by cash or credit. They did not have any documentation of the weight when he asked. He authorized a charge of only $2,500 on his credit card. The movers called the Calgary office who accepted the $2,500 payment. The respondent charged the applicant's credit card $2,500 on September 4, 2018 and a further $1,049 on September 11, 2018, which the applicant says was without authorization.

20. According to the applicant, after unloading the movers still had many items in the truck and said they had two more 'moves' to unload. This is supported by September 5 text messages exchanged with the respondent's driver, so I accept this as true. The applicant says his belongings occupied 1/3 to 1/4 of the cargo space in the moving truck.

21. The respondent charged the applicant $3,549. The invoice does not identify GST but the "charged at" section reads '5200' and $650 per 1000 lbs. That yields a cost of $3,380, and adding 5% GST gives the $3,549 total. As mentioned above, the applicant takes issue with the weight estimate as there was initially no documentation such as a ticket from an official scale.

22. When the applicant later asked the respondent for weight documentation, he first received photos of 2 partial tickets showing the gross weight of a truck apparently

before and after loading, giving a weight difference of 2,850 kg, or 6,283 lbs. The respondent's representative said they took 1,000 lbs off to account for items on the truck that did not belong to the applicants. The dates were covered by a receipt. Several emails and several partial photos of the tickets later, the applicant obtained unobstructed photos of the tickets.

23. After reviewing the ticket evidence, I agree with the applicant that the respondent has manually changed the date on the tickets from September 3, 2018 to September 1, 2018. The respondent's explanation was that the weigh scale tickets were faint so the dispatcher darkened the date so the customer could read it, and accidentally wrote the wrong date. That explanation strains credulity, particularly given the dispatcher did not darken anything else on the tickets.

24. The applicant contacted the scale operator and obtained unaltered copies of the tickets, which confirms that the original date on the tickets was September 3, 2018. The scale is in Calgary. I agree with the applicant that it is unlikely that the tickets were for his load, which arrived in Victoria the morning of September 4. This is reinforced by the evidence that the truck broke down somewhere between the two cities on or around August 31, 2018.

25. I agree with the applicant that the respondent is unable to substantiate the weight of the load for which they charged him.

26. The respondent's representative Ms. Alvarez submits that she has worked in the moving industry for over 20 years and says that the weight and size of the applicant's load "combined with the size of the unit to be moved are approximately 5000 pounds plus or minus 10%." I place little weight on this submission because there is no suggestion that Ms. Alvarez assisted with loading or unloading the applicant's goods or witnessed the goods being loaded or unloaded. As well, the respondent agreed to provide a verifiable measurement of the weight, not an estimate plus or minus 10%.

27. I found above that it was a key term of the parties' contract that the respondent would provide a verifiable weight of the applicant's goods. It was important because the entire basis of the bill was the weight of the load. By failing to substantiate the weight of the load, the respondent breached the contract.

28. The respondent was in the best position to provide evidence to justify its invoice and it has not done so. The applicant seeks $1,160.25, which is the difference between what the respondent charged ($3,549) and the high end of the mover's estimate of 3,500 lbs ($2,275 + GST = $2,388.75). I find this estimate reasonable in the circumstances. I note that it is higher than the respondent originally estimated for a typical home like the applicant's. I order the applicant to refund the respondent $1,160.25.

Is the respondent liable for the applicant's losses due to the late delivery of goods?

29. There is no dispute that the applicant's goods were delivered on September 4, 2018, 3 days after the original delivery date.

30. The applicant relies on Alberta *Bill of Lading and Conditions of Carriage Regulation (BLCC regulation)*. The BLCC regulation is under the Alberta *Traffic Safety Act.* In section 6 of schedule 9 it says that at the time of acceptance of the contract, the carrier will provide a date or time period for delivery. If the carrier fails to deliver on time it is liable for "reasonable food and lodging expenses incurred by the consignee."

31. The respondent says for long-distance moves it never gives a delivery date or time because delays may occur. I take this to mean it does not guarantee a delivery date or time, but rather provides an estimate. There is no evidence that the respondent gave the applicant a date range. To the contrary, the emails indicate a specific date, and the applicant's evidence was that he confirmed the delivery date with the respondent on numerous occasions. The respondent provided no statements from its employees to challenge the applicant's evidence.

32. The respondent says that according to the Alberta *Traffic Safety Act* if the customer is notified of the delay, compensation for the lodging and food is not necessary. It says the applicant was notified of the delay and had ample time to make arrangements.[1] The respondent did not explain which section of the legislation provides for this exception, and I was unable to find it. In any event, there is no dispute that the respondent did not notify the applicant about the delay until the afternoon of September 1, the date his goods were supposed to have been delivered.

33. Even if the BLCC Regulation did not apply, I would find that the respondent should reasonably have foreseen that a 3-day delay in a long-distance move would cause the applicant to incur expenses.

34. The applicant claims $300 for accommodations based on 3 nights at $100 per night. He also claims $306.00 for food, based on the simplified Canada Revenue Agency moving allowance rate of $51 per person per day, for him and his partner.

35. The applicant must prove, on a balance of probabilities, that he actually incurred the expenses he claims. The respondent says he is unable to provide receipts as he was unaware that he could claim these expenses. He did not say what kind of accommodations he stayed in, such as a hotel. In the absence of a receipt or credit card statement I am not persuaded that the applicant incurred accommodation costs.

36. I accept that the applicant was unable to cook and therefore likely incurred meal expenses. However, it is not clear that the applicant had to pay for his partner's meals. His partner was not a party to the contract and there is no evidence that the respondent should have foreseen her meals as consequences of the late delivery.

37. On a judgement basis, I find the applicant is entitled to $200.00 in damages for the late delivery.

[1] Decision amended pursuant to section 64 of the Act to correct typographical errors.

Is the respondent liable for the applicant's allegedly lost patio set?

38. The applicant says the respondent's moving practices were careless both physically and logistically. He says the movers damaged several pieces of furniture, although he did not claim for these damages. He says the respondent lost a box containing a disassembled patio table and 2 chairs.

39. The applicant submitted a photo that shows several stacked boxes and other items. He says the photo was taken immediately before the move. He identifies the box that contains the patio set. His text messages confirm that he alerted the movers to the lost patio set within an hour of their departure from his home on September 4, 2018. On balance, I find that the box containing the patio set was accepted by the respondent in Edmonton and not delivered to the applicant in Victoria.

40. The respondent says it is not responsible for the lost box. It also says the terms and conditions that the customer agreed to do not allow for replacement of the item, as the box contents cannot be verified. I note the terms and conditions are apparently on the back of the written contract but neither party put a copy of them in evidence. I place no weight on the respondent's unsupported assertion about what the terms said.

41. Section 14 of the BLCC regulation states that a carrier transporting goods shall exercise due care and diligence to protect the goods from loss or damage. Schedule 9 provides that the carrier is not responsible for loss of contents of customer-packed articles unless the loss is caused by its or its employee's negligence. Schedule 9 also places the burden of proving the absence of negligence on the carrier. A contract is governed by the law of the jurisdiction where it was formed – in this case, Alberta. However, in BC, the *Motor Vehicle Act Regulations* contain nearly identical provisions.

42. Accordingly, the question is whether the respondent has established that it was not negligent in failing to deliver the applicant's patio set. I find that the respondent, as a moving company, owed the applicant a duty of care. I previously found that the

respondent caused the applicant's loss. The respondent must therefore establish on a balance of probabilities that it did not breach the applicable standard of care.

43. I find that expert evidence is not required to establish the standard of care of a mover when moving someone's personal effects. I find the standard of care is that of a reasonably prudent mover taking reasonable care not to damage or lose the customer's belongings. The respondent has not provided any statements from the movers or any other evidence to indicate they took reasonable care not to lose the box containing the patio set. It provided no evidence of precautions that are in place to prevent loss, or steps it took to look for the lost item. Given that the burden of proof is on the respondent, I find that the respondent was negligent in losing the applicant's patio set.

44. The applicant provided evidence showing the cost of the identical patio set is $250. I find that this a reasonable replacement cost, and I order the respondent to pay the applicant that amount.

Conclusion

45. I have found that the applicant is entitled to a refund of $1,160.25, plus $200 for lodging and meal expenses and $250 for the replacement cost of the patio set, for a total of $1,610.25.

46. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the monetary award from the date of the final payment (September 11, 2018) to the date of this decision.

47. 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 find the applicant is entitled to reimbursement of $125 in tribunal fees. He did not claim any dispute related expenses.

ORDERS

48. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $1,765.15, broken down as follows:

    a. $1,610.25 in damages,

    b. $29.90 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125.00 in tribunal fees.

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

50. 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.

51. 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.

Micah Carmody, Tribunal Member