Civil Resolution Tribunal

Date Issued: October 25, 2019

File: SC-2019-003185

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hugo's Moving Ltd v. Yost-Johnstone et al*, 2019 BCCRT 1218

B E T W E E N :

HUGO'S MOVING LTD

APPLICANT

A N D :

LARA YOST-JOHNSTONE and ED JOHNSTONE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicant, Hugo's Moving Ltd, provided moving services to the respondents, Lara Yost-Johnstone and Ed Johnstone. The applicant invoiced the respondents $1,785 and they paid $1,285. The applicant wants the respondents to pay the remaining $500 invoice balance.

2. The respondents say they have not paid the $500 invoice balance because the applicant damaged their furniture, dirtied their carpets, and overcharged them for travel time.

3. The applicant is represented by an owner or principal and the respondents are each 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, they 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 applicant overcharged the respondents or damaged their property so as to justify the respondents' $500 deduction from the invoice.

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. On October 13, 2017, the applicant sent the respondents an estimate for loading a moving truck on October 31, 2017, overnight storage, and unloading on November 1, 2017. The applicant's stated hourly rate was $145 plus GST for 3 movers and 1 truck. The estimate was between $1,437.19 and $1,627.50 plus tax, depending on whether the respondents required use of a garage.

12. It is undisputed that on October 31, 2017, the parties signed a contract, and the applicant provided moving services to the respondents on October 31 and

November 1, 2017. Clause 8 of the contract states that the respondents agreed to pay the full cost of the services provided after work started.

13. On November 8, 2017, the applicant sent the invoice to the respondents for $1,785. It shows that on October 31, 2017, 3 movers worked with 1 truck from 3:30 p.m. to 9:45 p.m., plus 30 minutes of travel time. The invoice shows that on November 1, 2017, 3 movers worked with 1 truck from 7:15 a.m. to 10:30 a.m. plus 45 minutes of travel time, and an additional mover worked with 1 truck from 10:30 a.m. to 11:15 a.m.

14. On November 20, 2017 the respondents paid the applicant $1,285 and withheld the remaining $500 balance of the invoice. They say they did this because the applicant overcharged them, broke their mirror, damaged their dresser and soiled their carpet. Since it is undisputed that the applicant provided the moving services described in its invoice, I find the respondents are responsible for proving they are not required to pay the $500 invoice balance.

Overcharges

15. The respondents say the applicant overcharged them for travel time. In their submissions they refer to estimated travel times on Google Maps that are shorter than the travel times on the invoice, but they did not submit any evidence of these Google Maps searches. I also note that such estimates may not account for traffic, construction, or other driving conditions on the moving days. The respondents did not specify which times on the invoice were incorrect. On balance, I find there is insufficient evidence that the applicant overcharged the respondents. Therefore, I find the respondents are not entitled to withhold payment on that basis.

Mirror

16. The respondents submitted photos of their mirror showing damage on at least 1 corner. They did not provide photos of the mirror before it was damaged. They say

the mirror was less than 1 year old and that it would cost $200 to $300 to replace, but they provided no evidence to establish this.

17. The applicant says the damage was pre-existing. It also says the mirror was unframed glass not packaged for transport, and that under clause 7 of contract and clause 2 (b) of the Terms and Conditions, it is not liable for such damage. Clause 7 of the contract says the applicant is not liable for "glass already cracked or chipped, unframed glass doors and etc…". The "Terms and Conditions" is a separate document which appears to be signed by one of the respondents, but not by the applicant. The respondents say they never received a copy of the Terms and Conditions, but they admit that it looks like one of them signed it. Clause 2 (b) of the Terms and Conditions says the applicant is not responsible for damage to fragile articles that the applicant does not pack or unpack, including mirrors.

18. I find it is unnecessary for me to determine whether the mirror is included in either clause 7 of the contract or clause 2 (b) of the Terms and Conditions. This is because I find the respondents' evidence does not show that the applicant damaged the mirror, and therefore I find the respondents are not entitled to withhold payment of the invoice on that basis.

Dresser

19. The respondents submitted a photo of their dresser with scrape marks in a section along the bottom, which they say the applicant caused. However, they did not submit any photos of the dresser's condition before the move.

20. The applicant says it wrapped the dresser in a thick blanket before moving it, and that it did not damage the dresser during the move. It says the dresser must have been damaged before the move.

21. While I find the evidence establishes that the dresser is damaged, it does not establish when that damage occurred or who caused it. Therefore, I find the

respondents have not established that the applicant damaged the dresser, and so they are not entitled to withhold payment of the invoice on that basis.

Carpet

22. The respondents say the applicant dirtied the carpet on the stairs which required cleaning. They submitted one photo showing dirty carpeted stairs. They submitted an August 8, 2017 receipt for carpet cleaning which they say proves they had recently cleaned their carpets prior to moving.

23. The applicant says the respondents' carpets were not clean when it arrived. It says it used a 10-foot long rug in front of the entrance and nylon carpet in front of the stairs for its employees to wipe their feet, but the respondents had a gate at the bottom of their stairs preventing it from applying its usual floor protection. It says the contract required the respondents to keep all pathways clear, which they did not do. It also says there were multiple contractors on site on the day of the move, so the respondents cannot prove it was the applicant that dirtied the carpet.

24. The respondents admit that there was a cable installer on their property that day, but they say he wore protective booties over his shoes. They say the other people helping them clean their home that day did not use the stairs. As with the other alleged damage, I find the respondents have not established that the applicant dirtied the carpets. Anyone could have dirtied the carpet between August 8, 2017 when the carpet was last cleaned, and the move on November 1, 2017. The fact that multiple people were in the respondents' home on the moving day also weakens the respondent's allegation. I find the respondents are not entitled to withhold payment on this basis.

25. The respondents say that under clause 2 of the contract the applicant self-insured its customers for any loss or damage. While I agree that is a contractual term, I have found that the respondents have not proved the applicant caused loss or damage during the move. Therefore, I find this clause does not assist the respondents.

26. Given my conclusions above, I find the respondents must pay the applicant the $500 invoice balance.

27. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the $500 owing calculated from November 1, 2017, which is the last date the applicant provided moving services, to the date of this decision. This equals $15.18.

28. 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 successful, I find it is entitled to reimbursement of $125 in tribunal fees. It did not claim any dispute-related expenses.

ORDERS

29. Within 14 days of the date of this order, I order the respondents to pay the applicant a total of $640.18, broken down as follows:

    a. $500 in debt,

    b. $15.18 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in tribunal fees.

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

31. 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.

32. 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