



# Civil Resolution Tribunal

Date Issued: November 15, 2019

File: SC-2019-004479

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Whitehouse v. Larix Landscape Ltd.*, 2019 BCCRT 1296

B E T W E E N :

CAROL WHITEHOUSE

**APPLICANT**

A N D :

LARIX LANDSCAPE LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. The applicant, Carol Whitehouse, says she hired the respondent, Larix Landscape Ltd., to trim some trees in her yard. According to the applicant, the respondent cut more branches off a cedar tree than she had wanted. The applicant asks for an order that the respondent pay her \$3,000 for trees and soil to restore her lost

privacy. The respondent admits that it cut the applicant's branches, but disagrees with the extent of the applicant's claimed damage and remediation costs.

2. The applicant is self-represented. The respondent is represented by its principal.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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**

7. The issue in this dispute is whether the respondent should pay the applicant \$3,000 as compensation for the loss of tree branches.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. Each party provided evidence and submissions in support of their position. While I have considered all of this information, I will only refer to what is necessary to provide context to my decision.
9. As noted above, the applicant hired the respondent to trim some trees on her property, including a cedar tree in the back yard. The applicant says she asked the respondent to prune the lower branches of the cedar tree so that they were not hanging over a nearby fence. An April 9, 2019 Proposal describes the proposed work on the tree as “red cedar, backyard, cut branches away from deck, back fence line”. The evidence before me shows that the applicant was concerned about the number of hours allocated to the work on this tree, and asked the respondent to reduce the scope of work. In an April 11, 2019 email message to an employee of the respondent, the applicant stated, “I just want the large branches trimmed back from the deck”. Based on the emails exchanged between the parties, I find that the respondent agreed to the reduced scope of work.
10. According to the applicant, on April 17, 2019, the respondent’s staff removed about 30 branches from the cedar tree instead of the 6 that she wanted. The applicant says the removal of these branches resulted in a loss of privacy, an increase in traffic noise, a change in light and wind exposure, and reduced wildlife habitat. The respondent agreed that there had been a miscommunication about the extent of the work to be done on the cedar tree, but denies that 30 branches were removed. A photograph provided by the applicant shows the tree with branches removed well above the fence line, and the remaining branches appear to be approximately equal to the roof line of the neighbouring home. Although the image does not show both

sides of the tree in question, it does show 18 fresh cuts. I accept that it is possible that there are additional cut marks on the portion of the tree that is not visible. Based on the images provided, I also accept that the applicant's yard is more exposed to her neighbours than it was before the tree work.

11. Although the applicant was not satisfied with the other work that the respondent performed on her property, her claim only concerns the backyard cedar tree. The respondent stated that the applicant owes it money for work performed but, despite being offered an opportunity to do so, did not file a counterclaim for the outstanding funds. I find that I do not have enough evidence before me to consider the possibility of an equitable set-off. Therefore, I will confine my analysis to the cedar tree.
12. There is no indication that additional work needs to be done on the cedar tree, and not evidence before me that its health has been impacted by the cut branches. The applicant's concern is the loss of privacy and wind protection. The parties disagree about what should be done to fix the situation. The applicant's initial view was that 3 to 5 12 to 15-foot trees would be sufficient to provide privacy and a wind screen. Later, when she learned that 10-foot trees were available, the applicant determined that 4 of these trees would replace the branches that had been removed. According to the applicant, she was unable to obtain a cost estimate for the trees because the nursery only deals with wholesalers, but the topsoil would cost \$65. The applicant says she hopes that \$3,000 will pay for 4 10-foot trees and some topsoil to restore her privacy.
13. The respondent stated that it had offered to plant 3 8-foot cedars or provide the applicant with 3 12-foot cedars "at cost" to make up for removing the branches from the cedar's trunk. The respondent did not say how much either of these options would cost, but I infer that it would be less than the \$3,000 claimed by the applicant.
14. The evidence before me does not contain a report from an arborist or landscaping professional to comment on the size and/or number of trees that may be required to create a privacy screen, or the associated cost. I find there is insufficient evidence

to establish what size of tree would be appropriate in the applicant's circumstances. Instead, I will consider the case law about the appropriate amount of compensatory damages for the loss of tree branches and the associated loss of privacy and enjoyment of a property.

15. In *Kates v. Hall*, 1991 CanLII 1127 (BCCA), the British Columbia Court of Appeal considered compensatory damages for tree cutting. The Court found that the appropriate award for compensatory damages included a payment for reasonable remedial work plus "an amount which will fairly compensate the plaintiffs for loss of use and enjoyment to the extent that this scheme will not completely replace what has been lost".
16. The case law suggests that the removal of branches attracts lower damages awards than the removal of an entire tree. In *Kiessling v. Varga*, 2002 BCSC 90, the defendant removed branches from some of the plaintiff's trees without permission, resulting in a loss of privacy. The evidence in that case did not establish the need for new plantings. However, the Court awarded the plaintiff \$2,000 for the thinning of the canopy.
17. The evidence in *Kiessling* suggested that the gaps in the canopy would fill in with the normal growth of the trees. In this case, the respondent removed branches removed from only 1 tree and, as there are no other trees in that area of the property, it does not appear that the growth of other trees would lessen the loss of privacy over time. On this basis, I am satisfied that that the applicant is entitled to more damages than the plaintiff in *Kiessling*. I find that the claimed sum of \$3,000 is reasonable compensation for the applicant in her particular circumstances.
18. I also find that the applicant is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from the date of loss, this equals \$34.14.
19. 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 \$125.00 in tribunal fees.

## ORDERS

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,159.14, broken down as follows:

- a. \$3,000 in damages,
- b. \$34.14 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 in tribunal fees.

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

22. 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.

23. 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.

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Lynn Scrivener, Tribunal Member