Civil Resolution Tribunal

Date Issued: April 2, 2020

File: SC-2019-007282

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Colbeck v. Hugo's Moving Ltd.*, 2020 BCCRT 367

B E T W E E N :

KATHRYN COLBECK

APPLICANT

A N D :

HUGO'S MOVING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicant, Kathryn Colbeck, says the respondent, Hugo's Moving Ltd., damaged some of her household items during 2 moves. She claims $2,223.18 for the items.

2. The respondent denies damaging any of the goods. It also denies liability for any damage based on certain terms of the parties' contract.

3. The applicant is self-represented. The respondent is represented by its owner.

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 some respects, both parties in this dispute call into question each other's credibility. 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 *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:

    a. Did the respondent damage some of the applicant's household goods?

    b. If so, is the respondent obligated to pay for that damage, and how much?

EVIDENCE AND ANALYSIS

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

Background

10. It is undisputed that the applicant hired the respondent for 2 moves. On June 3, 2019, the respondent moved the applicant's items from her old home to a third-party storage facility in a different city about 50 km away. On August 2, 2019, the respondent moved the applicant's items from storage to her new home about 12 km away. The respondent's employees, IR and RT (movers), did the loading and unloading for both moves. The parties signed written contracts for each move.

11. The first move on June 3 took about 4 hours and there were no major issues.

12. During the second move on August 2, the movers were unable to back the moving truck up the applicant's steep driveway. The applicant says the movers seemed stressed, and as the move progressed she felt they were being careless.

Television

13. The largest portion of the applicant's claimed damages, $1,663.18, is for a damaged flat screen television (TV). There is no dispute that the movers wrapped the TV in blankets and moved the TV into storage on June 3. There is also no dispute that the movers did not move the TV on August 2. The applicant says, and I accept, that she moved the TV on August 1 because the cable technician was scheduled for August 2. The parties disagree about whether the applicant or the movers damaged the TV.

14. The applicant says the cable technician discovered the damage on August 2 when he unwrapped the TV and placed it on a stand. She says the frame was buckled out. She says one of the movers, RT, said, "Oh no, I must have synched the load to tight" (reproduced as written).

15. The applicant says she asked the other mover, IR, what to do, and he said to call the office. It is undisputed that the applicant called the office and spoke with AB, the respondent's operations manager. AB wanted to speak to the movers before calling the applicant back.

16. AB provided a statement, in which she says that the movers advised the only television they moved that day was still on the truck. I infer that the applicant had 2 televisions.

17. When the applicant spoke to AB again that day, there was some confusion about which television was damaged and when. The applicant says AB denied that the movers had moved the TV at all. AB says the applicant grew outraged and said the movers moved the TV twice. The applicant says she was frustrated and emotions were running high. I accept that explanation for the miscommunication, given the applicant's evidence about her stress levels over the challenges of the move, which I have largely not detailed here.

18. The applicant says she moved the TV from storage to her new home with the help of a relative, BR. She says they kept it wrapped in the respondent's blankets and beige tape. She says they were very careful and did not drop, bang or hit the TV.

19. BR provided a statement. He confirmed that he helped the applicant collect the TV from storage on August 1. He said they put it in the applicant's SUV, drove it to the applicant's new home, and placed it in her dining room. He said they did not drop, bang or damage it.

20. The applicant says the TV's damage is consistent with being squeezed, not dropped. She says there are "strap marks" on both sides of the TV. Her photos only show one side of the TV. I am unable to discern strap marks, although there is visible damage. Her photos also show the screen display is no longer functional.

21. The applicant submitted a statement from CS, an assistant manager of an electronics store. CS said he inspected the applicant's damaged TV. He said the glass screen was intact but the frame on the right side was buckled separated from the screen. In his experience (which was not described), the TV was 'somehow squeezed" or had something heavy placed on top of it to cause the frame to separate from the screen. I put limited weight on CS's evidence because CS does not have any qualifications in the design or structural mechanics of flat screen televisions. Moreover, CS does not say he has loaded or unloaded flat screen televisions or observed them being damaged by straps.

22. Three of the applicant's friends and neighbours provided statements. Generally, they said the applicant was dissatisfied with the respondent's incomplete work. I find their evidence mostly unhelpful because none of them say that they observed the movers damaging any of the applicant's belongings.

23. The respondent suggests the applicant either accidentally dropped her TV, put something heavy on it, or damaged it by laying it flat in her vehicle. The applicant admits she laid the TV flat for the 12km drive from her storage locker to her home, but says this is unlikely to have caused the damage.

24. The respondent provided a screenshot of a webpage from "hireahelper.com", saying it is "bad" to lay a flat screen television flat rather than upright. It says when a television screen is laid flat, there is inadequate support in the middle, which can lead to cracking or distortion on the edges if left that way over time. It also says vehicle vibrations increase the chances of cracking or distortion. I find this evidence provides one possible explanation of how the applicant may have damaged her TV without realizing it. The statement from CS did not indicate he was aware that the TV was transported flat or whether that could cause the observed damage.

25. The mover RT provided a statement. He confirmed that he was made aware during the move of the broken TV. He said he noticed the TV was still wrapped in the respondent's blankets, but it had clear tape rather than the tan tape the respondent uses. He does not elaborate but I infer he is suggesting that the applicant unwrapped and rewrapped the TV.

26. RT did not address the applicant's allegation that he said he cinched a strap too tightly. He did not provide any information about how he loaded and transported the TV during the first move. While RT's failure to address the cinching issue is problematic, I find it is not determinative of the damage issue. Even if on August 2 he said he may have cinched too tightly, that does not mean that he did in fact cinch too tightly and caused damage. As well, the applicant did not say she observed the movers using straps on the TV.

27. I find the evidence on the whole does not lead me to conclude the TV was damaged by overly tight cinching. There are multiple possible explanations for the TV damage. The TV was not in the respondent's care and control for a month before the damage was discovered. During that time, it was stored, loaded, transported, and unloaded by the applicant. I do not mean to suggest that the applicant has made her claim dishonestly, and I accept that she does not believe she damaged her TV. However, on balance, I find the applicant has not proved that the respondent damaged her TV. I dismiss her $1,663.18 claim for the TV.

Other items

28. The applicant provided a statement from TD, who said the applicant moved her belongings from TD's residence. It was not explained if TD was the applicant's landlord, roommate, or some other relation. Overall, I find TD's evidence was lacking in details and was more opinion rather than factual. For example, TD said each of the applicant's belongings were in perfect or great condition, but did not explain how they knew this, such as from recent personal observation. I have given TD's evidence limited weight.

29. The applicant claims $200 for damage to her elliptical machine. The applicant submitted photos showing cracks in various components of her elliptical machine. She said it had no damage prior to the move. RT acknowledged in his statement that the movers made a small crack in a casing on the bottom. He did not say whether he noticed any other pre-existing cracks. I find the respondent caused at least some damage to the elliptical machine.

30. The applicant says the movers scratched her dresser and broke an arm on her lawn chair, which she values at $40 and $30 respectively. The damages are supported by photos. RT's statement did not address these alleged damages. The respondent provided no other evidence to refute the allegation that the movers scratched the dresser and broke the lawn chair arm. I accept the applicant's evidence about these items. I address below compensation for the elliptical, dresser, and lawn chair.

31. The applicant claims $200 for sofa damage. The applicant's sofa and loveseat feature reclining seats. From the photos, I am unable to discern any damage. The applicant says one recliner makes an usual sound. She submitted a video of a recliner in operation, but I cannot conclude from the video that the recliner does not work as designed. I find the respondents did not damage the sofa or loveseat. I dismiss this claim.

32. The applicant says the movers broke one antique china plate, for which she claims $20. She suspects they used the box holding the plates as a step stool. However,

she does not say she observed this, so I dismiss this allegation as speculation. The applicant provided no photo of the broken plate or evidence of its value. I dismiss this claim.

33. The applicant says the movers broke Christmas tree lights and an artificial plant, which she values at $40 and $30 respectively. She submitted a photo of various items piled in her laundry room. The photo shows a plant but damage is not evident. I am unable to identify Christmas lights in the photos. I dismiss this claim.

34. In summary, I find the respondent's movers damaged the applicant's elliptical machine, lawn chair, and dresser. I find the rest of the damages unproved. I address the applicable compensation below.

Contract terms and applicable law

35. For each move, the parties completed a Bill of Lading, a Moving Services Agreement (MSA), another document titled "Terms and Conditions", and an untitled sheet setting out the total cost, agreement to pay, and other details (closing sheet).

36. The Bill of Lading says the service performed is subject to the uniform conditions of carriage, including conditions applicable to all transportation of goods for hire by highway carriers licensed under federal and provincial legislation. In BC, the applicable legislation is the *Motor Vehicle Act* (MVA) and the *Motor Vehicle Act Regulations* (MVAR).

37. Section 37.39(2) of the MVAR says a carrier who operates a business vehicle and accepts household goods for shipment must issue a bill of lading meeting various requirements. It also says the bill of lading must contain or incorporate by reference a list of "specified conditions of carriage". Those conditions are set out in 18 articles.

38. The parties' contracts provide a number of liability exclusions. The respondent only raises one, which required written notice of a claim within 30 days. It is undisputed that the applicant gave written notice of her damaged items a few days after the second move. This article would only serve to exclude items alleged to have been

damaged in the first move, which was only the TV. Because I found the TV damages were not proved, it is not necessary to address the contractual limitation period.

39. The parties' contracts provide other liability exclusions, such as a maximum liability of 60 cents per pound per article. Although the respondent did not specifically rely on these exclusions, I will briefly explain why I find them inapplicable.

40. In *Lawlor v. Galaxy Mobile Storage Inc*. et al, 2018 BCPC 330, the BC Provincial Court considered MVAR section 37.39(2) in a domestic move like this one. The court held that if a contract falls short of compliance with the MVA or its regulations, the carrier is not entitled to rely on the MVAR's liability exclusions.

41. I find the parties' contract fell short of compliance with the MVAR. For example, section 37.39(2)(b)(ii) requires a statement "in conspicuous form" that signing for receipt of goods does not preclude a future claim for loss or damage. There is no such statement on the Bill of Lading or elsewhere in the contract. There is also no space to indicate the agreed date or time of delivery as required by section 37.39(2)(b)(vii). Following *Lawlor*, which is binding on me, I find the respondent cannot rely on the MVAR's exceptions to liability because it has not followed the MVAR's strict requirements.

42. On the closing sheet, the applicant initialed to confirm that she checked that all her belongings reached her new destination and no damages of any kind were found. The respondent seems to suggest that this precludes her from claiming damages. I disagree because the MVAR says signing for receipt of goods does not preclude a future claim for loss or damage. As well, the MVAR contemplates damage claims being made within 60 days.

43. The MSA also contains a clause that would limit the respondent's liability to the total amount of the contract. Because I find below that the total damages are less than the amount of either contract, this clause does not apply.

Remedy

44. As noted, the applicant claims $200 for the cracks to the elliptical machine, and says there were no cracks before the move. There is no dispute that the movers caused at least one crack. RT said the movers left the elliptical machine in the garage so she must have moved it again herself. The applicant says the movers placed the elliptical machine in the workout room as the garage was full. On balance, I find the respondent caused the cracks to the elliptical machine.

45. The applicant did not say that the elliptical machine is no longer functional, so I find the cracks, although some are significant, are cosmetic in nature. There is no evidence about the original price or the age of the machine, but from the photos it appears in otherwise good condition. Given the circumstances, on a judgment basis I award damages of $100 for cosmetic damage and lost resale value.

46. For the scratched wooden dresser, the applicant claims $40. I find $40 is the minimum it would cost to sand out the large scratch and refinish the dresser, or to purchase a used replacement dresser. I allow the $40 claim.

47. For the lawn chair, the applicant claims $30. She did not provide its age or purchase price. She describes it as a “gravity lawn chair”, and from the photos it appears to recline. The applicant said she is not claiming full retail value for any of the items, and based on the amounts she claims, I agree. I find $30 represents a reasonably discounted valuation for the age of the lawn chair and I allow it.

48. In total, I find the applicant is entitled to compensation of $170.

49. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the $170 from August 2, the date of payment to the movers, to the date of this decision. This equals $2.22.

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. As the applicant was partially successful, I find she is

entitled to reimbursement of half her $125 tribunal fees, which is $62.50. The applicant did not claim dispute-related expenses.

ORDERS

51. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of $234.72, broken down as follows:

    a. $170.00 in damages for the damaged items

    b. $2.22 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $62.50 for tribunal fees.

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

53. The applicant's remaining claims are dismissed.

54. 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.

55. 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