



Civil Resolution Tribunal

Date Issued: May 4, 2020

File: SC-2019-004180

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Coastal Bins v. Brenton Funk (dba Peak Roofing)*, 2020 BCCRT 485

B E T W E E N :

COASTAL BINS

APPLICANT

A N D :

BRENTON FUNK (Doing Business As PEAK ROOFING)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Butch Bagabuyo

INTRODUCTION

1. This dispute is about payment for a waste container rental and waste disposal fees.
2. The applicant, Coastal Bins, says that the respondent, Brenton Funk (dba Peak Roofing), rented its waste disposal container and filled it with roofing waste materials. The applicant says that it disposed of the respondent's waste and paid for

the disposal fees. The applicant seeks \$901.93 from the respondent for the unpaid container rental and disposal fees.

3. The respondent admits it has not paid the applicant, but disputes the amount he owes, saying it should only be charged \$721.55.
4. The applicant is represented by its principal, DH. The respondent is self-represented.

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. In this dispute, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find that an oral hearing is not necessary, and I can fairly hear this dispute through written submissions.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is to what extent the respondent must pay the applicant for waste container rental and disposal fees.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant must prove its claim, on a balance of probabilities. The respondent did not submit any documentary evidence in this dispute. While I have read and considered all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. It is undisputed the respondent rented the applicant's waste disposal container and filled it with roofing materials. It is also undisputed that the applicant disposed of the respondent's roofing waste materials and paid for its disposal fees. The applicant says the respondent has not paid for its services.
12. The applicant's December 4, 2018 invoice for \$935.22 was itemized as follows: (a) \$225 for the bin, (b) 485.30 for waste scale ticket, (c) \$180.38 for collection fee charged at 25%, and (d) \$44.54 for GST.
13. Other than its invoice, the applicant did not provide any other evidence to support its claim. The applicant did not supply the date or dates of its services or the duration of its container rental. The applicant did not explain the terms of the parties' agreement, if any. The applicant did not say if it had a written agreement or a verbal agreement with the respondent. I note that the applicant's invoice claimed "25% for overdue non-payment / admin fee / Per Terms & Agreements." Yet, the applicant did not provide any evidence about its purported agreement on collection fees.

14. The applicant's claim is for \$901.93, but its invoice total says \$935.22. The applicant does not explain the discrepancy of the amounts between its claim and its invoice. It is unclear if the respondent made some payment, which might explain the two different values. In any event, the applicant's claim for this dispute is for \$901.93.
15. In response, the respondent says that due to a family emergency, he was out of the country and was not able to pay the applicant. The respondent admits the debt for the waste container and disposal fee, but says he only owes the applicant \$721.55. The respondent does not agree to the collection fees because he says that was not part of their agreement.
16. The applicant says that it has a contractual agreement. However, as noted above, the applicant has not set out the terms of its contract, if any, and the applicant did not provide any evidence to prove the terms of its purported contract. Since the respondent admits to the debt for waste container rental and disposal fees, I find that it is not necessary for the applicant to prove the existence of a contract to prove its claim for waste container rental and disposal fees.
17. As noted above, the applicant's invoice included a claim for 25% or \$180.38 as collection fee "per terms & agreements." Other than claiming 25% collection fee in its invoice, the applicant did not provide any evidence to support that collection fee was part of their agreement. As mentioned at the outset, the applicant bears the burden of proof in this dispute. An invoice in and of itself is not proof of an agreement or proof of the terms of the contract. As such, I find no basis for collection fee because there is no evidence before me that the parties agreed to a collection fee. Thus, I find the applicant's \$180.38 claim for collection fee is unproven.
18. In summary, I find the applicant is entitled to the payment of its claim (\$901.93) less the collection fee (\$180.38). This amounts to \$721.55, which the respondent admits he owes.

19. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the amount owing calculated from December 4, 2018, which was the date of the applicant's invoice to the date of this decision. This equals \$24.16.
20. 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 partly successful due to the respondent's admission, I find it is entitled to half of its tribunal fees for \$62.50. There is no claim for any dispute-related expenses.

ORDERS

21. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$808.21, broken down as follows:
 - a. \$721.55 in debt,
 - b. \$24.16 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50 for in tribunal fees and for dispute-related expenses.
22. The applicant is entitled to post-judgment interest, as applicable.
23. 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal

will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

24. 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.

Butch Bagabuyo, Tribunal Member