



Civil Resolution Tribunal

Date Issued: May 14, 2020

File: SC-2019-011057

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Move It. YVR Inc. v. Devathastan*, 2020 BCCRT 530

B E T W E E N :

MOVE IT. YVR INC.

APPLICANT

A N D :

KEZIA DEVATHASTAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about residential moving services. The applicant, Move It. YVR Inc., says the respondent, Kezia Devathastan, has failed to pay for its moving and

packing services provided on December 15 and 16, 2019. The applicant claims an outstanding balance of \$2,837.75.

2. The respondent says she does not owe the claimed balance, but instead a lesser amount, because she says the applicant damaged a Bang & Olufsen speaker during the move. The applicant says there was only minor cosmetic damage to the speaker and that a replacement speaker is not justified.
3. The applicant is represented by its president, Todd Mosher. The respondent is 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. What is the value of the damage to the respondent's speaker?
 - b. To what extent, if any, should the applicant's outstanding invoice balance should be reduced based on damage to the respondent's possessions?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. It is undisputed the respondent hired the applicant to pack and move her personal belongings on December 15 and 16, 2019. As noted above, the issue is to what extent should the applicant's invoice balance be reduced for admitted damage to the respondent's speaker.
11. The applicant claims \$2,837.75 as the outstanding balance for the respondent's residential move. However, the applicant also says it is prepared to pay for the speaker damage, but not its full replacement cost. The applicant does not say what would be an appropriate amount to deduct for the speaker's damage. Further, the applicant did not provide any evidence about the speaker's value, other than to argue that a full replacement is unnecessary because the respondent has allegedly

not proved the speaker's sound quality was impacted by the damage. More on the speaker damage below.

12. Next, I note the applicant did not submit any documentary evidence, apart from Mr. Mosher's written statement setting out his version of events. In particular, there is no quote, invoice, contract, bill of lading, or any emails or texts between the parties, even though the respondent's statement refers to various emails.
13. The respondent says \$2,463.43 is the outstanding balance for the applicant's services, not \$2,837.75. I find \$2,463.43 is the outstanding balance, as that is what the respondent agrees to and the applicant has not proved otherwise given the absence of any supporting documentation. This \$2,463.43 is subject to deduction for the speaker's damage discussed below. I pause here to note the respondent says the applicant damaged other items, but that she is repairing those at her own expense. Given her position, I make no findings about the other alleged damaged items.
14. I accept the applicant told the respondent that her keyboard, guitar and speaker system would receive "extra, extra attention when they are packed and moved", which the applicant did not deny. I find this assurance is support for the conclusion that the applicant reasonably knew that it would be a significant issue if the speaker was damaged in any way.
15. I turn then to the issue of reasonable compensation for the damaged speaker. This turns on whether the speaker can be repaired or whether it must be replaced. It is undisputed the speaker was in perfect condition before the move, which conclusion is supported by a statement in evidence from the respondent's boyfriend DW. The respondent's submitted photo of the speaker shows it is clearly dented. Based on the photo, I do not agree with the applicant that the cosmetic aspect of the damage was only minor.
16. The respondent provided a brief January 6, 2020 email from JM, the general manager of Commercial Electronics. JM wrote that the parts for the respondent's

speaker were no longer available and the replacement cost of an equivalent product would be \$780, for a Beoplay M5 speaker. On January 20, 2020, JM sent the respondent a follow-up email saying he wanted to confirm that he believed “a physical defect and/or damage on a speaker driver” would likely affect sound quality.

17. The applicant says it does not accept JM’s “arbitrarily and hastily written email”, and that JM’s opinion was not based on a physical examination of the speaker. The applicant says there is no evidence that the speaker’s sound quality has in fact been impacted.
18. I do not accept JM’s email as expert evidence. It does not set out JM’s qualifications as required by the tribunal’s rules and it is also not clear to me that a general manager of an electronics store would necessarily be qualified to address whether the speaker’s sound quality was impacted. It is also speculative in that JM wrote “I do believe” the speaker’s sound quality was impacted, and yet there is no evidence he examined the speaker.
19. However, I do accept JM’s uncontradicted evidence that the speaker cannot be repaired because the necessary part is no longer available. I also accept that a similar replacement would cost \$780, which is undisputed.
20. So, the question is whether I can accept a full replacement is reasonable, in the absence of expert evidence that the speaker’s sound quality was impacted. In the circumstances here, I find the answer is yes. I say this because I have found the cosmetic damage was not minor and because I find the respondent is entitled to be put in the position she would have been in if the applicant had not damaged her speaker. That position is having a speaker in perfect condition, bearing in mind the applicant’s assurance pre-move that it would take “extra, extra” care of the speaker. There is no evidence before me that the speaker can reasonably be repaired. On balance, I find the respondent is entitled to the speaker’s full replacement, which I value at \$780 based on JM’s evidence.

21. Given my conclusion above, I find the applicant is entitled to \$1,683.43 (\$2,463.43 - \$780). I dismiss the balance of its claim.
22. The *Court Order Interest Act* (COIA) applies to the tribunal. The applicant is entitled to pre-judgment interest under the COIA on the \$1,683.43, from December 30, 2019, the date the applicant started this tribunal proceeding. I choose December 30 because there is no invoice before me and I find 2 weeks is a reasonable time to pay after the December 16, 2019 move. This COIA interest equals \$12.32.
23. Under section 49 of the CRTA and the tribunal's rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I decline to order reimbursement of the applicant's tribunal fees. The evidence shows the respondent reasonably made an offer to pay part of the outstanding balance if the applicant agreed to take responsibility for the speaker, with the balance to be paid after the value of the speaker's damage was determined and deducted. Instead of responding, the applicant started this proceeding less than 2 weeks later. No dispute-related expenses were claimed, and so I make no order for them.

ORDERS

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$1,695.75, broken down as follows:
 - a. \$1,683.43 in debt, for the applicant's moving services less the cost of a replacement speaker, and
 - b. \$12.32 in pre-judgment COIA interest.
25. The applicant is entitled to post-judgment interest as applicable.
26. 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 a Ministerial Order 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.

27. 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.

Shelley Lopez, Vice Chair