



Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2020-000216

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cleaning Angels Janitorial Services Ltd. v. Fender's Automotive Center Ltd.*, 2020 BCCRT 742

B E T W E E N :

CLEANING ANGELS JANITORIAL SERVICES LTD.

APPLICANT

A N D :

FENDER'S AUTOMOTIVE CENTER LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a contract for janitorial services. The applicant, Cleaning Angels Janitorial Services Ltd. (Cleaning Angels) says that it provided services to the respondent, Fender's Automotive Center Ltd. (Fender's), but has not been paid

in full. Cleaning Angels asks for an order that Fender's pay it \$1,170.75, plus contractual interest. Fender's says that Cleaning Angels did not provide the services it contracted for, and that the amount claimed is inaccurate.

2. The parties are represented by employees.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether Cleaning Angels performed services under the parties' agreement such that Fender's owes it \$1,173.38 plus contractual interest.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
9. In the spring of 2019, the parties discussed the possibility of Cleaning Angels providing janitorial services to Fender's. The parties negotiated changes to a proposed contract, and signed a May 7, 2019 Janitorial Agreement for weekly cleaning services. The Janitorial Agreement stated that the initial service would involve cleaning the floors with a machine and that the weekly service would clean the floors, wipe down some surfaces, empty the garbage and clean the bathrooms. The Janitorial Agreement set out fees for additional services on request, and stated that billing would occur monthly with payment due within 15 days. The Janitorial Agreement provided that either party could cancel with 30 days written notice and that any changes must be in writing.
10. Cleaning Angels started work at Fender's shortly after the parties signed the Janitorial Agreement. Unfortunately, the working relationship did not proceed smoothly. The cleaners missed a bathroom on the first visit (which apparently was rectified) and there was a misunderstanding about the timing of the floor cleaning with the machine. The parties also exchanged email messages about Fender's disagreement with the timing of the billing cycle.
11. On June 3, 2019, Cleaning Angels sent Fender's a revised contract to correct what it described as "a mistake in our contract" about costs for supplies. Fender's did not sign this agreement.
12. In a June 24, 2019 email message, a Fender's representative advised that the contract was terminated effective that date. The message cited incomplete cleaning, poor quality of work, and the fact that the alarm log showed that Cleaning Angels' staff spent less than an hour cleaning the premises on June 21, 2019. Cleaning

Angels attempted to address these concerns in a reply email, but accepted the decision to terminate the contract.

13. Cleaning Angels sent its final invoice to Fender's on June 26, 2019. The \$1,170.75 detailed in the final invoice 15817 included unpaid charges from the previous invoice 15782. Cleaning Angels advised Fender's that it would waive cancellation charges if these invoices were paid in full by June 28, 2019. Fender's said that it would review the invoices in light of Cleaning Angels failing to clean the bathroom on the first visit, and not cleaning floors or performing dusting. Fender's provided a partial payment of \$585.37 on July 24, 2019.
14. In this dispute, Cleaning Angels submits that it performed the work required by the Janitorial Agreement, and that Fender's owes it the outstanding balance from the invoices of \$585.38, \$588.00 for failing to give the required cancellation notice, and contractual interest at an annual rate of 28%. Fender's says that Cleaning Angels did not perform the services required by the Janitorial Agreement and did not meet its obligation to conduct site visits to ensure quality. Fender's also says Cleaning Angels tried to change the contract to increase the price and billed for services before they were completed. Fender's position is that the \$585.37 partial payment was fair compensation for services Cleaning Angels did perform. Fender's did not address Cleaning Angels' claim for damages related to insufficient notice of cancellation.
15. Although not explicitly stated, I infer that Fender's position is that it is entitled to a reduction the amount owing because of deficiencies in Cleaning Angels' work and other breaches of the Janitorial Agreement. Cleaning Angels denies the alleged deficiencies. The burden of proof is on the party alleging defective work (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124) so Fender's must prove on a balance of probabilities that Cleaning Angels breached the Janitorial Agreement:
16. I do not find that the attempt to revise the contract or the disagreement about billing dates amount to breaches of the May 7, 2019 Janitorial Agreement. Further, as the

Janitorial Agreement did not require site visits to check on the quality of service, I find that the fact that Cleaning Angels did not inspect the premises does not establish a failure to fulfill its responsibilities.

17. Fender's says that Cleaning Angels did not clean the bathroom, clean the floors, or dust properly, and that some areas were not cleaned at all. However, Fender's did not provide evidence, such as photographs, to show areas that were not cleaned adequately or at all. Cleaning Angels says it rectified the missed bathroom cleaning, and that it would have addressed any other issues if it had been aware of them. The Janitorial Agreement did not specify the number of cleaners or the time that would be spent at Fender's location each week. Therefore, I find that the evidence from Fender's alarm system that shows the cleaners' entry and exit times does not establish that Cleaning Angels did not perform the required services.
18. Based on the evidence before me, and keeping in mind that Fender's bears the burden of proving deficiencies, I find that Fender's has not established that Cleaning Angels failed to perform the required services or otherwise breached the Janitorial Agreement. Accordingly, it is responsible for the full amount of the weekly charges shown on Cleaning Angels' invoices, and the outstanding \$585.38.
19. In addition, I find that Fender's did not cancel the Janitorial Notice with the required written notice 30 days in advance. I note that the \$588 cancellation charge claimed by Cleaning Angels is equivalent to four weeks of the \$140 weekly fee plus taxes. I find that Cleaning Angels is entitled to this amount.
20. The next consideration is the claim for contractual interest. The Janitorial Agreement says that invoices must be paid within 15 days of receipt, but it does not address contractual interest. Cleaning Angel's invoices contain a notation that interest of 2.5% per month (or 28% per year) will apply to all accounts from the date they are rendered. I am not satisfied that Fender's agreed to pay interest simply because it is printed on the invoice. Accordingly, I dismiss Cleaning Angel's claim for contractual interest.

21. However, the *Court Order Interest Act* applies to the CRT, and I find that Cleaning Angels is entitled to pre-judgment interest on the \$585.38 invoice amount and the \$588 cancellation charge. Calculated from the June 28, 2019 payment deadline to the date of this decision, this equals \$23.18.
22. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Cleaning Angels is entitled to reimbursement of \$125 in CRT fees.
23. Cleaning Angels also claimed dispute-related expenses of \$52.50 for title searches and 25% of any amount the CRT may award as a “collection fee”. Cleaning Angels did not provide proof of the expenses associated with the title searches or explain what the “collection fee” is for or based on. In any event, I find that a “collection fee” would not be a reasonable expense or charge directly related to the conduct of the proceeding, as contemplated by section 49 of the CRTA. Accordingly, I dismiss the claim for reimbursement of dispute-related expenses.

ORDERS

24. Within 30 days of the date of this order, I order Fender’s to pay Cleaning Angels a total of \$1,318.56, broken down as follows:
 - a. \$1,170.38 under the Janitorial Agreement,
 - b. \$23.18 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
25. Cleaning Angels is entitled to post-judgment interest, as applicable.
26. Cleaning Angels’ remaining claims are dismissed.
27. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Lynn Scrivener, Tribunal Member