



Civil Resolution Tribunal

Date Issued: September 1, 2020

File: SC-2020-003469

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fitzgerald v. Griffith Moving and Storage Ltd.*, 2020 BCCRT 969

B E T W E E N :

CATHERINE FITZGERALD

APPLICANT

A N D :

GRIFFITH MOVING AND STORAGE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about damage to a sliding door. The applicant, Dr. Catherine Fitzgerald, hired the respondent, Griffith Moving and Storage Ltd. (Griffith), to move her possessions out of her residence. Dr. Fitzgerald says that Griffith employees chipped the casing on which the residence's basement patio door slid, and claims \$4,846.16 in damages to replace the door and casing.

2. Griffith says its employees did not damage the door casing, and that it owes Dr. Fitzgerald nothing.
3. Dr. Fitzgerald is self-represented in this dispute. Griffith is represented by its owner, Paul Griffith.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT), which 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.
5. 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.
6. 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.
7. 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.

ISSUES

8. Does Dr. Fitzgerald own, or is she responsible for the cost of repairing, the chipped patio door casing?

9. If so, did Griffith employees damage the door casing, and does Griffith owe Dr. Fitzgerald anything for repairs?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Dr. Fitzgerald, as the applicant, must prove her claims on a balance of probabilities. I have read all the submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.
11. The undisputed evidence is that Dr. Fitzgerald hired Griffith to move her possessions from her residence to a new home on March 5, 2020. Griffith moved some of the possessions out through a basement patio sliding door. Griffith departed the residence on the morning of March 5, 2020, after loading all the possessions. On the afternoon of March 6, 2020, Dr. Fitzgerald sent an email to Griffith saying that the basement patio door casing was chipped.
12. Griffith says it walked through the residence with Dr. Fitzgerald after loading her possessions, checking for missing items, and did not notice any door damage. Dr. Fitzgerald denies going on a walk-through with Griffith. She says she noticed the door damage on the evening of March 5, 2020, hours after the move was complete, although she chose not to alert Griffith until the afternoon of the following day. Dr. Fitzgerald says the door track casing was chipped, and she found some chipped pieces of the casing lying on the carpet outside of the door. There are no photos of the chipped pieces in evidence.
13. Dr. Fitzgerald says that a window company told her the entire door casing and sliding door would have to be replaced in order to repair the chipped part of the casing. Griffith says, and Dr. Fitzgerald does not directly deny, that a window company owner advised him that the door casing damage was merely cosmetic, and does not affect the door's function. Neither party says whether anyone tested the door's function. From photos of the damaged door casing and other evidence, I find that the chipped casing did not affect the door's function.

Does Dr. Fitzgerald own, or is she responsible for the cost of repairing, the chipped patio door casing?

14. Dr. Fitzgerald says she moved out of her residence because she sold it to a new owner. She says that the new owner's possession date was March 7, 2020. However, Dr. Fitzgerald did not submit the contract of purchase and sale for the residence, or a land title document, or any other evidence showing either that she owned the residence, or the date on which her ownership transferred to the new owner. Dr. Fitzgerald does not explain why she did not provide this evidence. On balance, I find that Dr. Fitzgerald owned the residence before selling it, but the date of title transfer is unclear on the evidence before me.
15. Regardless, I accept Dr. Fitzgerald's submission that she no longer owns the residence or the chipped patio door, and that the new owner does. The evidence does not show that the door damage affected the residence's purchase price. However, Dr. Fitzgerald says she is responsible for the door damage, because it was a term of the contract of purchase and sale that the residence would be in the same condition when possession transferred on March 7, 2020 as it was when viewed by the new owner. I give this statement little weight because, as noted, Dr. Fitzgerald did not submit a copy of the contract, or any other evidence showing this was a term of the sale. Further, I find the evidence fails to show when the new owner viewed the residence, or whether the condition of the sliding door was noted on that unknown viewing date.
16. Dr. Fitzgerald also says that she told the residence's new owner that she would be responsible for repairing the chipped door casing. However, there is no other evidence supporting this statement, such as a witness statement or correspondence with the new owner. I find the evidence fails to show that the new owner agreed Dr. Fitzgerald was responsible for the chipped door casing. I also find the evidence fails to show that Dr. Fitzgerald is responsible for the damage under a contract of purchase and sale or otherwise. Further, I find the evidence does not show that the new owner intended to repair the chipped door casing, was willing to permit anyone to repair it, or sought any compensation from Dr. Fitzgerald for the chipped casing.

17. On the evidence before me, I find Dr. Fitzgerald has not met her burden of proving that she is responsible for the cost of repairing the new owner's chipped patio door casing, or that she has paid anything to repair it. This means that she suffered no loss or damage because of the chipped casing, so she has nothing to recover from Griffith. I dismiss her claims against Griffith.
18. Even if I had found that Dr. Fitzgerald was responsible to the new owner for the cost of basement patio door repairs, I still would have dismissed her claim, because she has failed to prove that Griffith caused any damage to the door casing, as described below.

Did Griffith damage the door casing, and if so, does Griffith owe Dr. Fitzgerald anything for repairs?

19. Dr. Fitzgerald says that the patio door and casing were undamaged before Griffith moved her possessions through it, and that only she and Griffith had been present in the residence when the damage must have occurred. She says that witnesses can confirm that the door was undamaged before March 5, 2020, and that several expert witnesses said the damage could only have been caused by very heavy weights on the bottom door casing, such as when moving heavy loads over the threshold on a dolly.
20. In support of these arguments, Dr. Fitzgerald refers to a significant volume of evidence, including notes located in her household files and her day timer, emails, online sources, her transcriptions of verbal conversations with alleged window experts, photos of chipped pieces of door casing, photos of the undamaged sliding door before March 5, 2020, evidence of 7 witnesses confirming the door was undamaged before March 5, 2020, evidence of several expert witnesses confirming the potential causes of the door casing damage, a home inspection report, a life-time warranty on the door and casing, and other evidence.

21. However, Dr. Fitzgerald submitted none of this evidence. Instead, she chose to submit her own interpretation and transcription of this alleged evidence that she typed herself.
22. Parties are told during the facilitation stage of a CRT dispute to provide all relevant evidence. Dr. Fitzgerald did not explain why she failed to provide this alleged evidence, which on balance I find was available to her, and instead submitted her own descriptions and excerpts of it. Dr. Fitzgerald's typed version of the alleged evidence of others is hearsay. As noted, 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, including hearsay evidence. However, the evidence does not support a conclusion that Dr. Fitzgerald's summary and interpretation of the alleged evidence is accurate and complete, because she chose not to provide the original evidence in her possession, or sufficient corroborating evidence. So, I find Dr. Fitzgerald's hearsay evidence is unreliable, and I give it little to no weight.
23. Griffith says it did not notice anything out of the ordinary during its walk-through, and that it would have noticed any pieces of door casing if they had been on the carpet at the time of the move on March 5, 2020. Dr. Fitzgerald agrees that the chips would have been seen by anyone near the door, and says that because Mr. Griffith did not see them, he must not have been in that room. I place no weight on that argument, because I find the evidence does not support Mr. Griffith never entering that room. Further, I find Griffith employees moved possessions through the patio door, and that they also would have noticed any chipped door casing pieces on the ground.
24. Dr. Fitzgerald does not say that she was in the basement patio door room during the move, or that she saw any Griffith employees move her possessions out of the basement patio door. She says that the Griffith employees were not properly supervised and did not properly protect the patio door casing, but does not explain how she knew this when she was not in that room during the move, and does not

describe what kind of door protection was used or should have been used. Dr. Fitzgerald also does not directly address Griffith's submission that only two-wheeled dollies contacted the bottom door casing, and that the dolly wheels do not line up with the chip damage, which is in the center of the doorway.

25. Dr. Fitzgerald says that several window "experts" said that the door casing chips could only have been caused by a very heavy weight on the casing. I find this topic requires expert evidence, as it is outside of ordinary knowledge. However, I find the evidence fails to demonstrate that the alleged experts were adequately qualified by education, training, or experience, as required by CRT rule 8.3. In any event, the alleged expert opinions are incomplete and are only provided as part of Dr. Fitzgerald's hearsay evidence, which I have already found is unreliable. So, I give these alleged opinions no weight. Based on the photos of the door casing and other evidence, I find that the chipped area is in the center of a thin vinyl or acrylic strip on the outer edge of the door threshold. I also find that the evidence does not confirm what amount or type of force would be required to chip the casing.
26. I find there is no reliable evidence of the condition of the door casing immediately before the March 5, 2020 move. Similarly, no door casing damage was noticed until at least several hours after the move, and Dr. Fitzgerald did not report any damage until more than 24 hours after Griffith departed her residence. No one saw Griffith employees chip the door casing, and no one in the area during or immediately after the move noticed any damage.
27. While I accept that the door casing could have been damaged by contact with the possessions being moved by Griffith employees, on balance I find the evidence fails to demonstrate that Griffith's actions actually caused the damage. Therefore, I find Dr. Fitzgerald has not met her burden of proving that Griffith damaged the door casing. I dismiss Dr. Fitzgerald's claims.

CRT FEES AND EXPENSES

28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Griffith was successful here, but did not pay any CRT fees. No CRT dispute-related expenses were claimed. So, I order no reimbursement of CRT fees or expenses.

ORDER

29. I dismiss Dr. Fitzgerald's claims, and this dispute.

Chad McCarthy, Tribunal Member