



# Civil Resolution Tribunal

Date Issued: December 18, 2020

File: SC-2020-003294

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *305466 B.C. Ltd. dba Servicemaster Restore v. Rogach*,  
2020 BCCRT 1428

B E T W E E N :

305466 B.C. LTD. doing business as SERVICEMASTER RESTORE  
**APPLICANT**

A N D :

VIKTORIIA ROGACH  
**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. On May 20, 2018, there was a shower overflow in a condominium owned by the respondent, Viktoriia Rogach. On May 24, 2018, the applicant, 305466 B.C. Ltd. doing business as Servicemaster Restore (Servicemaster), attended Ms. Rogach's

unit. Servicemaster says that it performed cleaning and repair services that Ms. Rogach has refused to pay for. It claims \$1,353.67 for these services.

2. Ms. Rogach says that she agreed to have Servicemaster attend her unit to provide an estimate but did not agree to have Servicemaster perform any services. She says that she should not have to pay for services that she did not ask for.
3. Servicemaster is represented by an employee. Ms. Rogach is represented by a non-lawyer friend.

## **JURISDICTION AND PROCEDURE**

4. 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT 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 of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. Section 42 of the CRTA says 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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Ms. Rogach agreed that Servicemaster would perform restoration and cleaning services in her unit at her expense.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Servicemaster as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. Ms. Rogach says that on May 20, 2018, she discovered that her unit had flooded. She says that she called her strata manager and a friend to help. She says that the strata manager provided a water pump, which they used to extract the water from the unit. Then, she says that they set up 3 large fans to dry the floor and removed the laminate flooring that had been damaged.
11. Ms. Rogach also reported the flood to her insurer. She says that her insurer told her that they would send Servicemaster to give an estimate on repairs. Ms. Rogach says that Servicemaster attended on the evening of May 24, 2018, when she was not home. She says that she knew Servicemaster would be attending so she made sure her friend was there. She says that this friend signed Servicemaster's "Statement of Work Authorization" (SWA). However, she says that she never agreed that Servicemaster would perform any restoration services.

12. Ms. Rogach also says that Servicemaster is claiming payment for work that she did with the property manager and her friend, such as water extraction and removing the laminate. She questions how Servicemaster could claim to extract water on an “emergency basis” 4 days after the flood.
13. Servicemaster invoiced Ms. Rogach \$1,353.67 for “emergency services” on July 9, 2018.
14. Neither party provided much evidence. There is no statement from the strata manager, Ms. Rogach’s friend, or any Servicemaster employee who attended Mr. Rogach’s unit or spoke with Ms. Rogach. There is no evidence of any written correspondence between the parties other than Servicemaster repeatedly demanding that Ms. Rogach pay the invoice.
15. Servicemaster relies primarily on the SWA. Under the SWA, the customer acknowledges that their insurer or property manager would approve the cost Servicemaster’s cleaning or repair services. The SWA says that the customer is responsible for paying for any repairs or cleaning not covered by their insurer. The SWA identifies Ms. Rogach as the customer.
16. There is no evidence that Ms. Rogach directly asked Servicemaster to perform any services. I infer that Ms. Rogach’s insurer made the request, and that Ms. Rogach’s insurer approved the work that Servicemaster did. With that, I find that Ms. Rogach is only required to pay for the work if she agreed to the terms in the SWA. This is based on the legal concept of “privity of contract”, which says that a contract cannot impose obligations on people who are not parties to the contract. So, Ms. Rogach’s insurer and Servicemaster cannot agree to make Ms. Rogach responsible for paying for services without Ms. Rogach’s agreement.
17. The SWA includes a place for the name and signature of the “Homeowner, Property Manager or other authorizing party”. On the SWA in evidence, there is a signature but no corresponding name. Ms. Rogach says that her friend signed the SWA. Ms. Rogach provided several examples of her signature, including from her passport,

driver's license and land title documents, which are consistent with each other but very different from the signature on the SWA. Servicemaster does not dispute that Ms. Rogach did not sign the SWA. I find that Ms. Rogach did not sign the SWA.

18. This does not necessarily mean that Ms. Rogach is not bound by the terms of the SWA. The law of agency applies when one party (the principal) gives authority to another party (the agent) to enter into contracts with third parties on its behalf. While Servicemaster does not use this language, in effect, it is arguing that Ms. Rogach's friend agreed to the SWA on Ms. Rogach's behalf as her agent.
19. There is no evidence that Ms. Rogach explicitly told Servicemaster that her friend could sign the SWA on her behalf. So, Servicemaster must prove that Ms. Rogach's friend had the apparent authority (also called ostensible authority) to act as Ms. Rogach's agent. The legal test for apparent authority is that Ms. Rogach must have represented through her words or actions that her friend had the authority to sign the SWA on her behalf. See *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295.
20. I find that the mere fact that Ms. Rogach had a friend let Servicemaster into her unit was not a representation that the friend could sign the SWA on her behalf. This is because having a friend present is equally consistent with Ms. Rogach's allegation that she only expected an estimate. Because Ms. Rogach was at work, someone else had to let the Servicemaster employee into the unit.
21. Servicemaster says that Ms. Rogach was "fully aware" that it was coming to do repair and cleaning services. Servicemaster does not explain this submission further and provides no supporting evidence such as a statement from an employee who spoke to Ms. Rogach or emails between the parties. Servicemaster also does not say that Ms. Rogach was aware that she, and not her insurer, could be responsible for the cost of any services. So, I place little weight on this statement.

22. I therefore find that there is no evidence to suggest that Ms. Rogach did or said anything to represent to Servicemaster that her friend could sign the SWA on her behalf. I find that Servicemaster has not proven that Ms. Rogach's friend had apparent authority to sign the SWA as Ms. Rogach's agent. Therefore, I find that Ms. Rogach did not agree to the SGA and is not bound by its terms.
23. As discussed above, without the SGA, I find that there is no legal basis for Servicemaster to make Ms. Rogach responsible for the invoice.
24. I considered whether to award Servicemaster damages based on the legal principle "*quantum meruit*", which means "value for work done". This principle allows me to order Ms. Rogach to pay a reasonable sum for Servicemaster's work. However, I find that it would be inappropriate to do so in this dispute because the evidence does not establish that Ms. Rogach asked Servicemaster to do any work.
25. Because of these conclusions, I find that I do not need to consider Ms. Rogach's arguments that Servicemaster billed her for work that it did not do.
26. For these reasons, I find that Ms. Rogach is not responsible for paying the invoice. I dismiss Servicemaster's claim.
27. 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. Servicemaster was unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses, including its claim for \$968.49 in legal fees. Even if Servicemaster had been successful, I would not have awarded legal fees because CRT rule 9.5(3) says that the CRT will only order a party to pay another party's legal fees in extraordinary circumstances. I find that there are no extraordinary circumstances in this dispute.
28. Ms. Rogach did not claim any dispute-related expenses and did not pay any CRT fees.

## **ORDER**

29. I dismiss Servicemaster's claims, and this dispute.

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Eric Regehr, Tribunal Member