



# Civil Resolution Tribunal

Date Issued: June 9, 2021

File: SC-2020-009214

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Saville v. 2 Burley Men Moving Ltd.*, 2021 BCCRT 636

B E T W E E N :

CARL SAVILLE and Jennifer Saville

**APPLICANTS**

A N D :

2 BURLEY MEN MOVING LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about moving services. The applicants, Carl Saville and Jennifer Saville, hired the respondent, 2 Burley Men Moving Ltd. (Burley), to move their possessions after selling their house. The Savilles claim \$200 for the loss of a

playhouse, \$617.16 for additional shipping expenses, a refund of \$400 for allegedly overcharged fees, and a \$560 refund for allegedly poor quality labour. This totals \$1,777.16.

2. Burley denies the Savilles' claims. Burley says that the Savilles were responsible for making sure that their possessions were loaded. Burley says that Saville should have asked for a replacement crew if they were dissatisfied with its workers. Further, Burley says that the Savilles should have requested additional crew members if they needed to move their possessions faster. In its Dispute Response, Burley says its invoice is accurate and it did not overcharge the Savilles. However, in its submissions, Burley acknowledged that it miscalculated the invoice and it agreed to refund \$400.
3. The Savilles are self-represented. Burley is represented by an employee.

## **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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Does Burley owe the Savilles \$200 for failing to move their playhouse?
  - b. Does Burley owe the Savilles \$617.16 for reimbursement of shipping container expenses?
  - c. Must Burley refund \$400 for alleged overcharges?
  - d. Must Burley refund \$560 for providing allegedly poor quality labour services?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicants the Savilles must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. It is undisputed the Savilles hired Burley to move their possessions from their 3,500 square foot house on October 1, 2020. The parties did not provide a written contract.
11. On September 30, 2020, Burley emailed the Savilles as follows:
  - Burley would start moving at 9 am on October 1, 2020.
  - Burley would provide 3 employees at the rate of \$160 per hour, with 2.5 hours of travel.

- The Savilles must be present for loading and unloading.

12. I find that the Savilles accepted the terms in Burley's email by proceeding with Burley's services and the email's contents became the parties' contract.

13. The Savilles made the following submissions that Burley did not dispute:

- Burley arrived over 45 minutes late.
- One of Burley's employees performed their work very poorly, requiring the other workers to repeatedly redo their work.
- Burley only loaded the moving truck to 3 quarters capacity because it did not have enough packing materials.
- Burley returned to the Savilles' old property at approximately 3:20 pm for a second load.
- The Saville's possessions were loaded by 5:00 pm.

14. Since Burley did not dispute any of these submissions, I accept them as accurate.

15. The Savilles also say that they ordered a shipping container to move their possessions because Burley were too slow and it did not fill its truck. Burley says that it performed the services requested and did not cause delays. Burley says the Saville's additional shipping container was not necessary.

### ***Playhouse***

16. It is undisputed that Burley left the Savilles' playhouse behind during the move. Mr. Saville says Burley agreed to transport the playhouse and Burley placed it at the edge of the property to pick it up when they left. The Savilles say they discovered that the playhouse was left behind the next day.

17. Since Burley does not dispute the Savilles' submissions, I find that Burley agreed to pick up the playhouse but failed to do so. However, Burley argues that the Savilles

breached the contract by not being present during loading. Burley argues that if the Savilles were watching, they should have noticed that the playhouse was left behind and notified Burley. Mr. Saville says he was present during loading but he was on the driveway when Burley's truck left, not at the edge of the property where Burley placed the playhouse. I find that the contract required the Savilles to be present during loading and unloading and, based on the Savilles' undisputed submissions, I find that they were present in compliance with the contract. There is no evidence before me showing that the contract required the Savilles to directly supervise the loading of every item as Burley argues. I find that it was Burley's responsibility under the contract to ensure that the playhouse was loaded after agreeing to do so. So, I find that Burley breached the contract by failing to transport the playhouse.

18. The Savilles have the burden of proving their claim, including the extent of their damages and the Savilles have not provided any photographs of the playhouse or a description of the playhouse such as its size, age or condition. However, since the Savilles claim a relatively small replacement value, which Burley does not dispute, I find that, on a judgment basis that the playhouse's value was \$200. So, I find that Burley must pay the Savilles \$200 for leaving the playhouse.

### ***Additional shipping expense***

19. The Savilles claim that Burley breached the contract by failing to move their belongings on time, allegedly causing \$617.16 in additional shipping expenses to order a sea shipping container to complete the move. The Savilles provided an October 1, 2020 receipt for this expense.
20. Ms. Saville says she told Burley that they needed to vacate the house by 3 pm when she hired it. Further, she says that Burley did not say that it would be unable to do so. However, a Burley employee JG made a January 21, 2021 statement saying that the Savilles reserved the moving truck from 9 am to 11 pm and there was no pickup deadline requested. JG says that Burley would have recommended 2 trucks if the Saville had demanded a 3 pm pickup deadline. Further, Burley argues that the Savilles should have requested additional crew members if they needed to move out

faster. I note that the contract terms in Burley's September 30, 2020 email do not state a pickup deadline.

21. On balance, I find that the Savilles have not proved that there was a 3 pm pickup deadline since I find Burley's evidence that there was no pickup deadline to be equally as likely. In the absence of a fixed deadline, I find that the contract had an implied term that Burley would complete its services in a reasonable amount of time. I find that Saville has not provided sufficient evidence to prove that Burley failed to do so. So, I dismiss the Saville's claim for reimbursement of their sea can container expense.

### ***Overcharged labour***

22. Burley's October 1, 2020 invoice charged \$2,080 for labour. At the rate of \$160 per hour, this amounts to 13 hours of service. However, the Savilles claim that Burley only performed 10.5 hours of service and they claim a \$400 labour refund. As stated above, Burley has acknowledged that it miscalculated the labour charges and it agrees to refund \$400. Since this claim is no longer disputed, I find that Burley must refund \$400 in overcharged labour.

### ***Poor work quality***

23. As discussed above, I accept the Savilles' undisputed submission that one of Burley's workers performed poor quality work that needed to be repeatedly redone by the other 2 Burley workers. I also find that Burley admitted that its workers did not perform properly by apologizing for its crew's conduct in a November 9, 2020 email and in its Dispute Response. Burley did not provide an employee statement explaining its conduct.
24. Burley argues that the Savilles did not call Burley's office to complain about its worker's performance. Burley says that if they had done so, it would have replaced the worker. However, I find that there is no contractual obligation on the Savilles to proactively ensure Burley provided effective workers, that obligation rested with

Burley. Further, Burley does not dispute Savilles' allegation that the worker did not provide effective work.

25. Based on the Savilles' undisputed submissions, Burley's acknowledgment and the lack of a statement from Burley describing the employee's work, I am satisfied that one of the Burley workers did not provide valuable labour services during the move. So, I find that Burley is not entitled to charge the Savilles for that employee's work. So, I find that the Savilles are entitled to a refund of 1/3 of Burley's labour charges. This equals \$560.

### **Interest, CRT Fees and Expenses**

26. The *Court Order Interest Act* (COIA) applies to the CRT. The Savilles are entitled to pre-judgment interest on the \$1,160 damages from October 1, 2020, the date of the service and invoice to the date of this decision. This equals \$3.59.
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. I see no reason in this case not to follow that general rule. Since the Savilles were partially successful, I find they are entitled to reimbursement of one-half of their CRT fees, being \$67.50. The Savilles did not claim reimbursement of dispute-related expenses.

### **ORDERS**

28. Within 30 days of the date of this order, I order Burley to pay the Savilles a total of \$1,231.09, broken down as follows:
- a. \$1,160 in damages,
  - b. \$3.59 in pre-judgment COIA interest, and
  - c. \$67.50 in CRT fees.
29. The Savilles are entitled to post-judgment interest, as applicable.

30. The Savilles' claim relating to the shipping container is dismissed.
31. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.
32. 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.

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Richard McAndrew, Tribunal Member