



Civil Resolution Tribunal

Date Issued: June 18, 2021

File: SC-2021-001084

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chevanns v. Delgado (dba Tidy Lots)*, 2021 BCCRT 672

B E T W E E N :

CHEMECA CHEVANNS

APPLICANT

A N D :

DAIMI GARCIA DELGADO (Doing Business As TIDY LOTS)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is over payment for cleaning services. The applicant Chemeca Chevanns say the respondent, Daimi Garcia Delgado (dba Tidy Lots), owes her

\$125 for cleaning services Ms. Chevanns provided. Ms. Chevanns says she should have been paid on February 5, 2021, or at least by February 6 through e-transfer.

2. Ms. Delgado texted Ms. Chevanns on February 6, 2021 that there would be a \$125 cheque waiting for pick-up on February 8, 2021. Ms. Chevanns chose to pursue this dispute instead, as discussed further below. It is undisputed Ms. Chevanns has retained Ms. Delgado's keys and cleaning supplies and has not explained why. Ms. Delgado did not file a counterclaim for the supplies.
3. The parties are each self-represented.

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). 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. 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. The evidence is unclear before me as to whether Ms. Chevanns was Ms. Delgado's employee or whether Ms. Chevanns worked as an independent contractor. The CRT has no jurisdiction to order payment under the *Employment Standards Act* (ESA). However, here Ms. Chevanns claims for money owed under the parties' agreement, which Ms. Delgado does not dispute. So, I find this dispute falls under the CRT's jurisdiction over debt and damages.
9. Ms. Delgado submitted evidence late, which included some duplicates of texts Ms. Chevanns submitted and her February 3, 2021 text message asking Ms. Chevanns for the return of her supplies and keys and for Ms. Chevanns to pick up her last cheque. I do not admit the duplicate evidence as doing so would serve no purpose. I admit the February 3, 2021 text because it is relevant and because Ms. Chevanns is not prejudiced as she had an opportunity to respond to it.
10. Finally, I note Ms. Chevanns repeatedly asks for Ms. Delgado to be "held accountable" for her calling Ms. Chevanns a "b***h" (my edit to remove profanity in this decision). First, I do not have jurisdiction to order Ms. Delgado to apologize or not engage in certain behaviour in the future. Second, there is no recognized tort of harassment in BC, to the extent Ms. Chevanns alleges the name-calling amounted to harassment. My jurisdiction is limited to the claim before me, which is whether Ms. Delgado owes Ms. Chevanns \$125 for unpaid cleaning work under the parties' contract. I also address the keys and cleaning supplies, as a setoff.

ISSUES

11. The issues in this dispute are whether Ms. Delgado owes Ms. Chevanns \$125 for unpaid cleaning work, and if so, to what extent is Ms. Delgado entitled to a setoff for the unreturned cleaning supplies and keys.

EVIDENCE AND ANALYSIS

12. In a civil claim like this one, the applicant Ms. Chevanns has the burden of proving her claim, on a balance of probabilities. Ms. Delgado bears this burden for the setoff. I have only referenced below what I find is necessary to give context to my decision.
13. It is undisputed Ms. Delgado owes Ms. Chevanns \$125 for cleaning work. It is unclear when the work was done that is the basis for the \$125 claim, but based on the parties' texts and submissions, I infer it was at some point in the 2 weeks before February 5, 2021. I note the parties' agreement began at some point after January 9, 2021, based on an email in evidence.
14. Ms. Chevanns admits she has not picked up Ms. Delgado's \$125 cheque, which the parties' text exchange shows Ms. Chevanns knew on February 6 would be available to her on February 8, 2021.
15. Instead, Ms. Chevanns filed her application to the CRT on February 8, 2021. I find it was unreasonable for Ms. Chevanns to pursue litigation for \$125 in a public tribunal when she knew the \$125 cheque was available to her that same day but she essentially wanted Ms. Delgado to be admonished for not paying her 2 days earlier by e-transfer rather than cheque. However, given my conclusion below, nothing turns on this.
16. I find Ms. Delgado owes Ms. Chevanns the claimed \$125, which as noted is not disputed. I do not need to address in detail Ms. Chevanns' arguments about paydays being on Fridays, though I find there is no evidence before me to support that assertion.
17. I turn then to Ms. Delgado's cleaning supplies and keys, which Ms. Chevanns admits she retains. Ms. Chevanns does not explain why she has refused to return them or make them available for Ms. Delgado's pick-up. Ms. Delgado asked for those items' return twice on February 3, 2021, again on February 6, and again in this dispute. As noted, Ms. Delgado did not file a counterclaim. However, from Ms.

Delgado's Dispute Response and submissions I find she asks for a set-off for the keys and supplies' value.

18. I find the cleaning supplies and keys are sufficiently connected to the parties' employment contract that Ms. Delgado's damages, if proven, are a reasonable or "equitable" set-off to anything reasonably owing under the applicant's invoice. This is consistent with the court's conclusion in *Dhothar v. Atwal*, 2009 BCSC 1203, where the court found the claimed set-off arose from the same course of dealings, the same parties, and is "so connected with the plaintiffs' claim that it would be unjust to allow the plaintiffs to enforce their claims without taking into account the set-off claimed". In that case, the court found the set-off claimed will engage the issues requiring resolution (see also *Wilson v. Fotsch*, 2010 BCCA 226 (CanLII) for a description of the criteria for equitable set-off). I find a similar situation here.
19. Ms. Chevanns' arguments are focused on Ms. Delgado's name-calling on February 6, 2021, which I find was in response to Ms. Chevanns' threat that she was going to sue Ms. Delgado for not paying that same day. I find nothing turns on the parties' growing animosity, in the circumstances here. In particular, I find the name-calling does not disentitle Ms. Delgado to a set-off for the cleaning supplies and keys.
20. I note section 21 of the ESA says that except where permitted by statute, an employer must not withhold or require payment of all or part of an employee's wages for any purpose. I find that, even if Ms. Delgado was Ms. Chevanns' employer under the ESA, a set-off in the context of this litigation does not offend ESA section 21. I say this because despite having not received the keys or supplies back, without any justification, Ms. Delgado nonetheless made the entire \$125 cheque available for pick up.
21. So, how much should I set-off for the cleaning supplies and keys? Notably, Ms. Delgado submitted no evidence of their value. Ordinarily, I might consider the lack of evidence fatal to a set-off claim. However, on balance I find that it is likely the supplies and keys are worth at least \$125, which is a relatively nominal amount. So, I find it reasonable in all the circumstances to entirely set-off the \$125 owing to Ms.

Chevanns for wages. In other words, Ms. Delgado ultimately owes Ms. Chevanns nothing because Ms. Chevanns has retained Ms. Delgado's keys and cleaning supplies.

22. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Both parties were ultimately successful, although I found above Ms. Chevanns unreasonably pursued this claim. However, neither party paid CRT fees nor claimed dispute-related expenses, so I make no order for them.

ORDER

23. I dismiss Ms. Chevanns' claim for unpaid wages, having taken into account a set-off for Ms. Delgado's cleaning supplies and keys.

Shelley Lopez, Vice Chair