



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *2 Burley Men Moving Ltd. v. Miller*, 2021 BCCRT 702

B E T W E E N :

2 BURLEY MEN MOVING LTD.

APPLICANT

A N D :

NICOLA MILLER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This dispute is about moving services. The applicant is 2 Burley Men Moving Ltd. (Burley). The respondent customer is Nicola Miller.

2. Burley claims \$5,000 for residential moving services it provided to the respondent. The respondent says that because Burley damaged and lost her belongings and damaged her home, she does not need to pay Burley.
3. Burley is represented by an employee and the respondent is self-represented.
4. For the reasons to follow, I find that the respondent must pay Burley.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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.
6. 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.
7. 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.
8. 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.

9. At the outset, I note that Burley charged more than \$5,000 for the respondent's move. However, by initiating this CRT dispute, I find Burley has abandoned any amounts over the \$5,000 maximum monetary limit of the CRT small claims limit.

ISSUES

10. The issues in this dispute are:
 - a. Did Burley damage and or lose the respondent's belongings, and if so, what is the appropriate remedy,
 - b. Did Burley damage the respondent's home, and if so, what is the appropriate remedy, and
 - c. Is Burley entitled to \$5,000 payment under the parties' moving contract?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Burley must prove its 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.
12. It is undisputed:
 - a. On July 25, 2020, the respondent contracted with Burley to move her belongings,
 - b. On November 19, 2020, the respondent paid Burley \$5,446.68 by credit card for its services,
 - c. After the move in November 2020, Burley damaged and lost some of the respondent's belongings. The respondent submitted an undisputed damaged and lost items list, which included various furniture, 2 electronic items, an exercise machine, various gardening items, various tools, and an ornament. The respondent estimates these items' replacement value at \$5,052, which

Burley does not dispute. The parties did not provide evidence on the exact move date in November 2020.

- d. On February 8, 2021, Burley was notified from its bank that the respondent's entire payment was subject to a charge back, and
 - e. On April 26, 2021, the respondent's bank approved the charge back and returned the entire payment back to the respondent.
13. Burley recognizes that the respondent should not pay the full invoice amount due to the damaged and missing items. However, Burley says that the respondent's damaged and missing belongings are limited to \$289.80 under its contract terms, which I will address this further below. Burley does not directly address the respondent's alleged home damage claim, but I find nothing turns on this given my conclusion below.
14. The respondent does not challenge the costs charged by Burley for its services. Instead, she says that she does not need to pay its invoice at all because Burley failed to provide "full service" when it damaged and lost her belongings. As the respondent did not file a counterclaim, I infer her position is that she is entitled to a "set-off" for the costs of the allegedly damaged and lost items, which I address below.

The Burley contract

15. The parties' July 25, 2020 contract, titled "Client Disclaimer" and signed by the respondent, shows the respondent had a Burley "protection plan" limiting the value of her goods to \$0.60 per pound, or a \$60 maximum per 100 pounds. The protection plan also states that any damage to "surrounding structures" from the move are the customer's sole responsibility. It also says if repairs are authorized it is just to "paint stage" only. The respondent does not challenge the protection plan, so I find that she accepted it at the time of contract. I further find that the protection plan is therefore binding on the respondent.

16. As noted, Burley says it calculates that their protection plan covers \$289.80 for the respondent's damaged and missing belongings. In a December 14, 2020 email, the respondent agreed to this valuation and accepted the settlement. Therefore, the respondent's adjusted Burley bill is \$5,156.88. As noted above, Burley waived the excess \$156.88 in this dispute due to the CRT's small claims \$5,000 monetary jurisdiction.
17. The respondent submits that she only agreed to the \$289.80 payout valuation on the expectation that Burley would find her missing belongings. However, there is no evidence to support a conclusion the respondent accepted the settlement conditional on this understanding. Instead, the evidence shows that when agreeing to the settlement the respondent accepted that the missing belongings would not likely be found. For these reasons, I find that the respondent agreed to a \$289.80 settlement for all her missing and damaged belongings.
18. I also note that the contract stated any damage or loss sustained during the move and identified at that time, does not release a customer from their obligation to pay all related charges for the move. I find from Burley's contract that it compensates damage claims separately after the bill has been paid. Therefore, I find that the respondent was contractually obligated to pay Burley's bill even if some of her belongings were damaged and missing. As noted above, the respondent initially did pay but undisputedly reversed the payment later. While the respondent suggests that I should find in her favour because her bank agreed to a charge back to her credit card, I am not persuaded by this argument. I am not bound by the bank's decision nor am I satisfied that the bank considered the same evidence and legal issues that are before me.
19. Given the above, I find the respondent owes Burley the claimed \$5,000 for her move.

Set-off

20. I will now consider whether the respondent is entitled to any set-off against the \$5,000 owed to Burley. As noted above, the respondent did not file a counterclaim. Because

the respondent is the party alleging the set-off, the burden to prove the set-off shifts to her.

21. A set-off is a right existing between parties that owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the residue (see Black's Law Dictionary, revised 4th edition, at paragraph 1538). When the desired set-off is closely enough connected with an applicant's claimed rights that it would be unjust to proceed without permitting a set-off, equitable set-off may be applied (see *Jamieson v. Loureiro*, 2010 BCCA 52 at paragraph 34). I find that equitable set-off applies here because the mutual alleged debts arise from the same circumstances surrounding the respondent's move and the terms and conditions in Burley's contract.
22. The respondent's main arguments for a set-off are that Burley damaged and lost her belongings and damaged her home during the move. As I have already found that the respondent's settlement for the damaged and lost belongings is binding on her, the only outstanding issue is the respondent's set-off argument for her allegedly damaged home.
23. In this regard, I find that the contract's protection plan governs. The respondent says that her walls and carpet were damaged because Burley did not use drop cloths. However, as noted above, the contract's protection plan clearly states that Burley will only be responsible for wall paint staging. However, the respondent did not provide any evidence showing the damaged walls or the costs incurred to repair the walls. For this reason, I am unable to reasonably find, or calculate on a judgement basis, the cost for the allegedly damaged walls. I also note there is nothing in the moving contract that suggests Burley would use drop cloths in the respondent's home. So, I find that the respondent has not proven she is entitled to a set-off for her damaged home and must pay Burley's full claim of \$5,000.

FEES, EXPENSES AND INTEREST

24. The *Court Order Interest Act* applies to the CRT. Burley is entitled to pre-judgment interest on the \$5,000 from March 22, 2021, the date of this dispute, to the date of this decision. This interest equals \$5.90. I am unable to award interest from the move date because as noted there is no evidence before me on that date.
25. 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. I find the Burley is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

26. Within 30 days of the date of this order, I order the respondent to pay Burley a total of \$5,180.90, broken down as follows:
 - a. \$5,000 in debt for unpaid moving services,
 - b. \$5.90 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.

29. 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.

Roy Ho, Tribunal Member