



# Civil Resolution Tribunal

Date Issued: August 19, 2021

File: SC-2021-002439

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Cambie Star Commercial Ltd.*,  
2021 BCCRT 908

B E T W E E N :

SUPER SAVE DISPOSAL INC.

**APPLICANT**

A N D :

CAMBIE STAR COMMERCIAL LTD.

**RESPONDENT**

A N D :

SUPER SAVE DISPOSAL INC.

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## **INTRODUCTION**

1. This dispute is about a waste removal services contract. The applicant and respondent by counterclaim, Super Save Disposal Inc. (Super Save), says the respondent and applicant by counterclaim, Cambie Star Commercial Ltd. (Cambie Star) breached the parties' contract by failing to make payments as required. Super Save also says Cambie Star lost one of Super Save's bins. Super Save claims \$1,942.17 in debt for unpaid services and bin replacement.
2. Cambie Star disputes the amount owing and says it was overcharged. Cambie Star also says Super Save damaged Cambie Star's door and door frame while providing waste removal services. Cambie Star counterclaims \$2,940 for the door repair costs.
3. Super Save does not dispute damaging Cambie Star's property, but says it should only pay Cambie Star \$997.83 for the difference between the repair costs (\$2,940) and the unpaid services (\$1,942.17).
4. Super Save and Cambie Star are both represented by employees.

## **JURISDICTION AND PROCEDURE**

5. 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.
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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether Cambie Star must pay Super Save \$1,942.17 in debt for unpaid services and bin replacement, and
  - b. Whether Super Save must pay Cambie Star \$2,940 for repair costs, or a reduced amount.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant, Super Save, and the applicant by counterclaim, Cambie Star, must prove their respective 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.

### ***Does Cambie Star owe Super Save \$1,942.17 for unpaid services and bin replacement?***

11. In its Dispute Notice, Super Save says that Cambie Star owed \$1,942.17 for unpaid services. In its submissions, Super Save says Cambie Star owes \$564.50 on the July

31, 2020 invoice, which is the remaining balance after “adjusting credits” on Cambie Star’s account. Super Save also says Cambie Star must pay four \$151.04 bin removal fees, and an additional \$149.43 for service charges on the missing bin, and \$192.00 for the missing bin itself. This totals \$1,510.29. Although the missing bin charges are not specifically claimed in the Dispute Notice, I find Cambie Star had an opportunity to address them in its submissions. So, I find it would not be procedurally unfair to Cambie Star to consider and address the missing bin charges, and I have done so in my reasons below.

12. Cambie Star disputes Super Save’s claimed amounts. Cambie Star says it was charged for services after the contract’s term expired on August 7, 2020, and was also charged separate bin removal fees for four bins, rather than being charged one bin removal fee. It says it only owes Super Save \$415.93 for 7 days of services in August 2020, and \$151.04 for the bin removal fee, for a total of \$566.97. Cambie Star did not specifically address Super Save’s credit adjustment on July 31, 2020 invoice.

August 2020 billing

13. Super Save says Cambie Star was never billed for August 2020 because Super Save cannot pro rate monthly services charges. It says Cambie Star was billed for July 2020 and the only August charge was the \$192 service charge for the missing bin. However, the July 31, 2020 invoice in evidence shows the amounts billed were for the monthly service period between August 1, 2020 to August 31, 2020.
14. It is undisputed that the parties’ contract term ended on August 7, 2020. An April 13, 2020 letter from Cambie Star provided notice to Super Save that Cambie Star was cancelling the contract on August 7, 2020. Super Save does not suggest that Cambie Star was not entitled to do so. It is also undisputed that Super Save ceased providing waste disposal services and removed four bins from Cambie Star’s property on August 7, 2020. Given this, I find Super Save had no contractual right to charge Cambie Star for waste removal services after August 7, 2020 and Cambie Star had no obligation to pay for any waste removal services after August 7, 2020.

15. As noted, Cambie Star says it only owes \$415.93 for 7 days of services in August 2020, which is the total amount of the July 31, 2020 invoice (\$1,841.96) pro-rated for 7 days. I agree and I find this amount accurate. So, I find Cambie Star must pay Super Save \$415.93 for the August 1 to 7, 2020 waste disposal services. Given that neither party further addressed the credits Super Save says it applied to the July 31, 2020 invoice to reduce the outstanding amount to \$564.50, I have not addressed them further, and I have based my finding on the total amount of the July 31, 2021 invoice, not the reduced amount suggested by Super Save.

### Bin Removal Fees

16. As noted, it is undisputed that Super Save removed four bins from Cambie Star's property at the end of the contract's term. Four August 7, 2020 invoices in evidence show four separate bin removal fees of \$151.04, inclusive of GST and administration fees. As noted, Cambie Star says it should have been charged one bin removal fee, not four. In support of this, Cambie Star submitted the parties' contract, which indicates that the bin delivery charge (\$85) and bin removal charge (\$135) is "flat rate for all bins". Cambie Star says this means it pays one flat rate for the removal of all bins. Super Save says this means Cambie Star must pay a flat rate for each bin removal.

17. Cambie Star also submitted an August 15, 2018 invoice, which indicates that Cambie Star was charged a bin delivery fee of \$98.54, inclusive of GST and administration fees, for bin delivery. I note that the invoice only indicates one bin was delivered. However, I also note that under the "service requirements" portion of the parties' original contract, five bins are listed. Super Save did not submit any other invoices to indicate that Cambie Star was charged any other bin delivery fees. I find the August 15, 2018 bin delivery invoice that charged one bin delivery fee, in combination with the fact that five bins were listed on the parties' contract, supports a finding that the parties' contract provided for one flat rate for the delivery and removal of all five bins. So, I find that Cambie Star is only responsible to pay one bin removal fee of \$151.04, for the removal of all four bins. I will address the fifth bin below.

Missing bin service charge and replacement fee

18. Super Save says when it attended to remove the five bins on August 7, 2020, one was missing. Super Save says it made two attempts to return to Cambie Star's property to locate the missing bin, but did not find the missing bin. After it was unable to locate the missing bin, Super Save charged Cambie Star \$192 for September 2020 waste removal services for the missing bin. As already discussed above, I find Super Save had no contractual right to charge for waste removal services after August 7, 2020. So, I find Cambie Star is not responsible for the \$192 service charge.
19. In January 2021, Super Save also charged Cambie Star \$149.43 for the missing bin itself. Super Save submitted internal notes that indicate Cambie Star confirmed it did not know the bin's location, which is hearsay evidence. Cambie Star denies that the bin is missing and says the bin is at their property, and Super Save can arrange a time to pick it up. The CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. However, I give little weight to Super Save's internal notes because Cambie Star has provided direct evidence about the missing bin. I find it appropriate to place more weight on Cambie Star's direct evidence that the bin is still at its property than on Super Save's notes summarizing Cambie Star's knowledge of the bin. Here, Super Save is the party seeking payment for the missing bin. So, the burden of proving the bin is missing rest with Super Save. In light of Cambie Star's submissions that the bin is still on its property, I find that Super Save has not proven on balance that the bin is missing. So, I find Super Save is not entitled to payment for the bin's replacement.

Summary

20. In summary, I find Cambie Star must pay Super Save a total of \$566.97 for outstanding waste removal services (\$415.93) and bin removal (\$151.04).

***Does Super Save owe Cambie Star \$2,940 for repair costs?***

21. As noted above, Super Save does not dispute damaging Cambie Star's property. Super Save agrees that the repair costs total \$2,940, but says it should only pay

Cambie Star \$997.83 for the difference between the repair costs and its unpaid invoices (\$1,942.17).

22. I have already found that Cambie Star must pay Super Save \$566.97 for its unpaid services and bin removal. So, I find that the outstanding amount Super Save must pay Cambie Star is \$2,373.03 (\$2,940 – \$566.97) for repair costs.
23. I note that Cambie Star also initially asked for an order that Super Save return keys and a “fob”. However, the parties resolved this aspect of the claim during CRT facilitation, so I make no order about it.
24. The *Court Order Interest Act* applies to the CRT. Cambie Star is entitled to pre-judgment interest on the \$2,373.03 award for repair costs from September 30, 2020, which I find is reasonable in the circumstances, to the date of this decision. This equals \$9.45.
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 Cambie Star is entitled to reimbursement of \$75 in CRT fees. As Super Save was not successful, I dismiss its fee claim. Neither party claimed any dispute-related expenses, so I award none.

## **ORDERS**

26. Within 30 days of the date of this order, I order Super Save to pay Cambie Star a total of \$2,457.48, broken down as follows:
  - a. \$2,373.03 for repair costs,
  - b. \$9.45 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$75 in CRT fees.
27. Cambie Star 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

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Leah Volkers, Tribunal Member