



Civil Resolution Tribunal

Date Issued: January 7, 2022

File: SC-2021-005647

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stephani v. Cant (dba Trixies Cleaning and Junk Removal)*, 2022 BCCRT
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B E T W E E N :

BETTY-JO STEPHANI

APPLICANT

A N D :

TRIXIE CANT (Doing Business As TRIXIES CLEANING AND JUNK
REMOVAL)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about cleaning and junk removal services. The applicant, Betty-Jo Stephani, says she hired the respondent, Trixie Cant (doing business as Trixies Cleaning and Junk Removal), to clean and remove junk from her home.

2. Ms. Stephani says Ms. Cant disposed of several of her personal belongings contrary to their agreement, and damaged her son's birthday cake. She claims reimbursement for several items, totaling \$2,540.57.
3. Ms. Stephani also asks for orders that Ms. Cant either tell her where the following items are located, or reimburse her for them in the following amounts:
 - a. Two large wooden slab soap molds - \$335.42
 - b. Blender base - \$220.93
 - c. 3D pen kit with accessories - \$231.56
4. Ms. Cant denies Ms. Stephani's claims, and says Ms. Stephani told her to "throw everything out", except food and soap crafting supplies. Ms. Cant says the birthday cake was accidentally damaged, but Ms. Stephani declined her offer to replace it. Ms. Cant denies throwing out any soap-crafting supplies and says the food was thrown out because her employee thought it was rotten.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. Some of the evidence in this dispute amounts to a "she said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict,

cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

8. 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.
9. 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

10. The issue in this dispute is whether Ms. Cant breached the parties' contract by wrongfully disposing of or damaging certain items, and if so, what remedies are appropriate, if any.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Ms. Stephani must prove her 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 that Ms. Stephani hired Ms. Cant to clean and remove junk from her home. It is also undisputed that Ms. Cant attended at Ms. Stephani's home on July 15, 2021 to complete the work.
13. Although Ms. Stephani does not use these words, I find she alleges that Ms. Cant breached the parties' agreement by disposing of items without permission, and claims damages. Damages for breach of contract are intended to place an innocent party in the position they would have been in if the contract had been carried out as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39.
14. Ms. Stephani claims reimbursement for the following items:
 - a. Fridge and freezer food - \$800
 - b. Box of soap oil - \$88.25
 - c. Voyageur supplies - \$529.87
 - d. Bath bomb press and molds - \$561.11
 - e. Birthday cake and replacement cake - \$96.00
 - f. 2 wood business display stands - \$255.34
 - g. Replacement garbage can - \$74.00
 - h. Replacement broom - \$18.00
 - i. Soap mold - \$18.00
 - j. Wireless phone charger, Bluetooth speaker, replacement cords - \$100

Did Ms. Cant breach the parties' agreement?

15. Ms. Cant says she was hired by Ms. Stephani to remove junk from Ms. Stephani's home because it was a fire hazard, and says Ms. Stephani was facing eviction if nothing was done. Ms. Cant says she threw out a full 14 foot trailer load of junk from Ms. Stephani's home. Ms. Stephani does not dispute this. I find it is undisputed that

Ms. Stephani's home was in a state of significant disarray when Ms. Cant and her employees attended to complete the junk removal and cleaning.

16. Ms. Stephani and Ms. Cant exchanged several messages prior to Ms. Cant attending at Ms. Stephani's home. I find these text messages show that on at least one occasion, Ms. Stephani instructed Ms. Cant to throw away "everything" during the junk removal and cleaning.

17. The parties' text messages include the following comments:

a. In a July 4, 2021 text message to Ms. Cant, Ms. Stephani wrote "I want to not be there and just let ppl do whatever. I'm not even sure all that really need to be done. I've lost track. My fridge, kitchen, are bad...". The same day, Ms. Cant responded and said she did not want to throw out anything important to Ms. Stephani, and suggested a walk through before work started.

b. In a July 10, 2021 text message to Ms. Cant, Ms. Stephani wrote "I have a bed, kids loft and 2 kid mattresses that need to go. The bed can be destroyed. Landlady is freaking out at me, under fridge, under stove, just complaining on everything. I'm to the point, toss everything..." The same day, Ms. Cant responded and said she would come with her truck and trailer and one or two other people to help.

18. I find that July 15, 2021 text messages in evidence between the parties confirm that Ms. Stephani was not present at her home for most of the junk removal and cleaning. Based on this, and the parties' other text messages set out above, I find Ms. Stephani gave Ms. Cant discretion to decide what to throw away during the cleaning and junk removal, apart from edible food and soap-crafting supplies. So, I find that Ms. Cant is not responsible for any of the items Ms. Stephani alleges she disposed of, apart from unspoiled food and soap-crafting supplies, which I will address below.

Food

19. Ms. Stephani says she instructed Ms. Cant not to throw away any food on the morning of July 15, 2021, when Ms. Cant attended at her home. She also says that she had shopped for new food the day before Ms. Cant attended for the cleaning. However, in submissions, she also acknowledged that some food needed to be thrown away.
20. Ms. Cant does not dispute that she was instructed by Ms. Stephani not to throw away food. However, she says rotten and freezer burnt food was thrown out because it was not edible. Ms. Cant provided a statement from SC, who I infer is a contractor or employee, and is also related to Ms. Cant. SC says they helped with the junk removal and were responsible for the kitchen. SC says the kitchen was in disarray. SC says they observed stacked pizza boxes with half-eaten mouldy pizzas inside, food wrappers and pieces of food littering the floor, and mouse droppings and flies everywhere. SC says when they opened the fridge, rotting food fell out. SC said the food was “contaminated” and the smell was nauseating. SC said they decided to throw everything out and spent 4 to 5 hours cleaning and disinfecting the fridge. SC also says that the birthday cake had been put in the oven because there was no room for it in the fridge. SC says that when they started cleaning the stove, they discovered the stove was a fire hazard and needed to be thrown out. SC says they forgot the birthday cake was inside the oven when loading the stove onto a trailer for disposal. SC says the cake had shifted in the container, but does not say that it was ruined. SC also says they offered to buy Ms. Stephani a new cake and she declined. Ms. Stephani admits that Ms. Cant offered to replace the cake, and she declined.
21. In July 15, 2021 text messages exchanged between the parties after Ms. Cant had completed the cleaning and junk removal, Ms. Stephani commented that her fridge and freezer were now empty, and she had not wanted any food thrown out. Ms. Cant responded that “[Ms. Stephani] literally said to throw everything out” and said that if her employees thought the food was good, they would have kept it. In a July 15, 2021 email from Ms. Cant to Ms. Stephani, she said the food was thrown out because they thought it was “no good”. Ms. Cant offered to take a reasonable amount off her invoice to cover “basic food”. However, neither party submitted Ms. Cant’s invoice in

evidence, or confirmed whether any amount was deducted from it. In any event, Ms. Cant says her \$1,700 invoice has not been paid and Ms. Stephani does not dispute this. So, I find nothing turns on Ms. Cant's offer to reimburse Ms. Stephani for some basic food. I make no finding about whether Ms. Stephani owes Ms. Cant the \$1,700 as Ms. Cant did not file a counterclaim.

22. Here, I accept SC's statement and place significant weight on it as it is undisputed that they were the person who cleaned out the fridge. Based on SC's statement, and because Ms. Stephani admits the home was in disarray, I find the fridge contained rotting food that required disposal. I also accept that the freezer contained freezer burnt food. I note that Ms. Stephani did not provide documentary evidence that she had unspoiled food in her fridge and freezer or recently bought \$800 of food. I find the July 4, 2021 text message from Ms. Stephani, discussed above, and her submissions also show that the fridge needed to be cleaned out. Given that the fridge undisputedly contained rotting food, and given the kitchen's general state of disarray, I find it was reasonable for SC to determine that no food was edible and dispose of all the food in the fridge and freezer. I find that doing so did not breach the parties' contract. So, I find Ms. Cant is not required to reimburse Ms. Stephani for any food.

Damaged birthday cake

23. As noted above, Ms. Stephani claims \$96 for a replacement cake. It is undisputed that SC accidentally damaged the birthday cake when moving the stove. However, it is also undisputed that Ms. Cant offered to replace it, and Ms. Stephani rejected her offer. So, I decline to grant any award for the damaged cake.

Soap-crafting supplies

24. Ms. Stephani alleges that Ms. Cant disposed of and damaged her soap-crafting supplies. Ms. Cant disputes this. She says she is not certain all of the claimed items were even in Ms. Stephani's home, and says she did not dispose of or damage any soap-crafting supplies.

25. Ms. Stephani did not explain how she identified the soap-crafting supplies that she did not wish to be thrown away, which she says included bath bomb forms, soap oil, and display stands, among other things. She does not say whether she specifically identified these items, placed these items in a separate room, or whether the items were mixed in with all of the other disposable items in her home. It is unclear whether Ms. Stephani pointed out all of her soap-crafting supplies to Ms. Cant, or whether Ms. Stephani simply advised Ms. Cant that soap-crafting supplies should not be disposed of.
26. As noted, Ms. Stephani bears the burden of proving her claims. Here, I find it is unlikely that Ms. Cant disposed of or damaged any soap-crafting supplies. I also find that given the extent of the cleaning and junk removal undisputedly required, and the discretion Ms. Stephani agreed to give Ms. Cant in disposing of junk in her home, Ms. Cant should have specifically identified any items that she did not want disposed. I find she has not proven that she identified all of the claimed soap-crafting supplies that she says are missing or damaged to Ms. Cant, or that Ms. Cant disposed of or damaged them. So, I find she had not met her burden of proving that Ms. Cant is responsible for replacing them.

Summary

27. As noted, Ms. Stephani bears the burden of proving her claims. Here, on balance, I find it unlikely that Ms. Cant or her employees threw away edible food or any soap-crafting supplies. Given the parties' agreement, I find that Ms. Cant is not responsible for the disposal of any other claimed items, whether they were disposed of, or not. So, I find that Ms. Stephani is not entitled to any of her claimed damages, and I dismiss her claims.
28. 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. However, Ms. Stephani was unsuccessful and did not pay any CRT fees in any event. Neither party claimed dispute-related expenses.

ORDER

29. I dismiss Ms. Stephani's claims and this dispute.

Leah Volkers, Tribunal Member